GLOBAL FORUM ON TRANSPARENCY AND EXCHANGE OF INFORMATION FOR TAX PURPOSES

Peer Review Report Phase 1 Legal and Regulatory Framework

NAURU

OECD

Global Forum on Transparency and Exchange of Information for Tax Purposes Peer Reviews: Nauru 2013

PHASE 1

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(reflecting the legal and regulatory framework as at October 2012)

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About the Global Forum

The Global Forum on Transparency and Exchange of Information for Tax Purposes is the multilateral framework within which work in the area of tax transparency and exchange of information is carried out by over 100 jurisdictions, which participate in the Global Forum on an equal footing.

The Global Forum is charged with in-depth monitoring and peer review of the implementation of the international standards of transparency and exchange of information for tax purposes. These standards are primarily reflected in the 2002 OECD *Model Agreement on Exchange of Information on Tax Matters* and its commentary, and in Article 26 of the OECD *Model Tax Convention on Income and on Capital* and its commentary as updated in 2004. The standards have also been incorporated into the UN *Model Tax Convention*.

The standards provide for international exchange on request of foreseeably relevant information for the administration or enforcement of the domestic tax laws of a requesting party. Fishing expeditions are not authorised but all foreseeably relevant information must be provided, including bank information and information held by fiduciaries, regardless of the existence of a domestic tax interest.

All members of the Global Forum, as well as jurisdictions identified by the Global Forum as relevant to its work, are being reviewed. This process is undertaken in two phases. Phase 1 reviews assess the quality of a jurisdiction's legal and regulatory framework for the exchange of information, while Phase 2 reviews look at the practical implementation of that framework. Some Global Forum members are undergoing combined – Phase 1 and Phase 2 – reviews. The Global Forum has also put in place a process for supplementary reports to follow-up on recommendations, as well as for the ongoing monitoring of jurisdictions following the conclusion of a review. The ultimate goal is to help jurisdictions to effectively implement the international standards of transparency and exchange of information for tax purposes.

All review reports are published once adopted by the Global Forum.

For more information on the work of the Global Forum on Transparency and Exchange of Information for Tax Purposes, and for copies of the published review reports, please refer to *www.oecd.org/tax/transparency* and *www.eoi-tax.org*.

Executive Summary

1. This report summarises the legal and regulatory framework for transparency and exchange of information in the Republic of Nauru. Although participation was encouraged, Nauru has limited resources and Nauruan officials were only able to participate, to a limited extent, later in the review process. As a result, the assessment was primarily based on publicly available laws and regulations in force or effect as at October 2012.

2. Located in the Western Pacific Ocean, approximately 4 000 km north-east of Australia, Nauru is the world's smallest island nation, with an area of 21 square kilometres. It has a population of approximately 9 233 inhabitants. Nauru achieved independence in 1968.

3. Nauru's primary economic activities in the twentieth century were the export of phosphate mined from the Island and revenue from fishing licenses. Having exhausted its primary phosphate reserves, in the 1990s it developed an offshore financial centre, a main component of which was offshore banking. In 2005, Nauru instituted a physical presence requirement for offshore banks, effectively abolishing 400 shell banks. Nauru was subsequently removed from the Financial Action Task Force's (FATF) list of non-cooperative countries and territories (NCCTs). Today, Nauru's economy is largely dependent on foreign aid, though revenue from fishing licenses and small-scale mining continue to contribute to its GDP. Nauru has no operational banks and there are no financial institutions offering financial services other than a remittance company offering remittances services since 2008. This company neither offers the opening of accounts nor takes deposits.

4. Nauru committed to the international standards of transparency and effective exchange of information in 2003 and has been a member of the Global Forum on Transparency and Exchange of Information for Tax Purposes since its beginning.

5. Ownership and identity information is generally available for most entities; however, some serious gaps were identified. Bearer shares/share warrants to bearer may be issued in Nauru and there are insufficient mechanisms in place to identify the owners of such shares/warrants in all cases. However,

as at December 2012, there were only 51 corporations registered in Nauru. Identity and ownership information may not consistently be available in respect of all domestic trusts and foreign trusts with Nauruan trustees.

6. Accounting requirements in Nauru do not meet the international standard. Companies are required to keep accounting records; however, no retention period is specified in most cases and no requirement is provided concerning underlying documentation. Partnerships carrying on business in Nauru, foreign companies with a sufficient nexus to Nauru and domestic and foreign trusts with a Nauruan trustee are not required to keep accounting records or underlying documentation.

7. Nauru has no powers to obtain ownership, identity, accounting or bank information for tax purposes. Moreover, a number of statutory confidentiality and secrecy provisions prohibit disclosure of information. Nauru has not yet entered into any instruments providing for exchange of information to the standard. In 2008, Nauru was approached by its main trading partner to negotiate a tax information exchange agreement (TIEA). To date, this agreement has not been concluded.

8. As elements which are crucial to achieving effective exchange of information are not yet in place in Nauru, it is therefore recommended that Nauru does not move to a Phase 2 Review until it has acted on the factors contained in the Summary of Factors and Recommendations to improve its legal and regulatory framework. Nauru's position will be reviewed when it provides a detailed written report to the Peer Review Group within 12 months of the adoption of this report. It should also provide an intermediate report within 6 months of the adoption of this report.

Introduction

Information and methodology used for the peer review of Nauru

9. The assessment of the legal and regulatory framework of Nauru was based on the international standards for transparency and exchange of information as described in the Global Forum's *Terms of Reference*, and was prepared using the Global Forum's *Methodology for Peer reviews and Non-Member Reviews*. The assessment was based on the laws, regulations, and exchange of information mechanisms in force or effect prior to the adoption of this report, other materials supplied by Nauru, and information supplied by partner jurisdictions.

10. The Terms of Reference break down the standards of transparency and exchange of information into 10 essential elements and 31 enumerated aspects under three broad categories: (A) availability of information; (B) access to information; and (C) exchanging information. This review assesses Nauru's legal and regulatory framework against these elements and each of the enumerated aspects. In respect of each essential element, a determination is made that either: (i) the element is in place; (ii) the element is in place but certain aspects of the legal implementation of the element need improvement; or, (iii) the element is not in place. These determinations are accompanied by recommendations on how certain aspects of the system could be strengthened (see the Summary of Determinations and Factors Underlying Recommendations at the end of this report).

11. The assessment was conducted by a team which consisted of two assessors and two representatives of the Global Forum Secretariat: Dr. Malcolm Couch, Head of Income Tax Division, Treasury Department, Government of the Isle of Man; Ms. Megumi Ezaki, Deputy Director of International Operations Division, Japanese National Tax Agency; and Ms. Laura Hershey and Ms. Renata Teixeira of the Global Forum Secretariat. The assessment team examined the legal and regulatory framework for transparency and exchange of information and relevant exchange of information mechanisms in Nauru.

12. Although participation was encouraged, Nauru has limited resources and Nauruan officials were only able to participate, to a limited extent, later in the review process. As a result, the assessment was primarily based on publicly available laws and regulations in force or effect as at October 2012.

Overview of Nauru

13. The Republic of Nauru is an island situated in the western Pacific Ocean, 4 000 km north-east of Australia. The total land area is 21 square kilometres, with the island divided into 14 districts. Nauru has no official capital, but its Government offices are located in the Yaren district.

14. First settled by Micronesian and Polynesian peoples, immediately prior to independence in 1968 it was a UN Trust Territory under Australian administration. The population of Nauru is 9 233 (2006 Census). The official language of Nauru is Nauruan, and English is also widely spoken.

15. The official currency in Nauru is the Australian Dollar (AUD). One USD is equal to AUD 0.993549 as at June 2012. Nauru's primary activity has been phosphate mining since the early 1900s, with the revenues from this resulting in Nauru enjoying one of the world's highest per capita income for a period in the 1960s and 1970s. Phosphate reserves reached a point of exhaustion, with production going from 1.67 million tonnes in 1985-86 to 162 000 tonnes in 2001-02, and halting in 2003.[1] At that time, more than 80% of the island was uninhabitable due to mined-out land. The Government-owned mining company, the Republic of Nauru Phosphate Corporation (or "RONPhos") in partnership with the National Rehabilitation Corporation (a statutory body) recommenced mining and exporting phosphate in mid-2006.

16. Phosphate revenue is shared between the Government, land owners and the Nauru Phosphate Royalties Trust (NPRT). The NPRT was set up as a sovereign wealth fund to invest a percentage of earnings from state-owned mining to provide for Nauru when phosphate reserves had been exhausted.

17. In August 1993, the Nauruan and Australian Governments signed a Compact of Settlement (NACOS) which ended litigation by Nauru against Australia in the International Court of Justice over rehabilitation of phosphate land mined before independence. As part of the settlement, Australia paid Nauru AUD 57 million and agreed to provide AUD 50 million over a period of 20 years. Australia has continued to provide aid to Nauru.[2] A rehabilitation programme for previously mined land was commenced in Nauru in 2009.

1. DFAT of Australia, *www.dfat.gov.au/GEO/nauru/nauru_brief.html*.
2. DFAT of Australia, *www.dfat.gov.au/GEO/nauru/nauru_brief.html*.

18. In 2005, Nauru released a National Sustainable Development Strategy, aiming to restructure and diversify the physical economy. Its economic sector goals are to increase the country's level of domestic agricultural production; enhance development and sustainable management of marine and fisheries resources; small and micro enterprises, foreign investment and economic integration into the global economy; promote development of small-scale sustainable eco-tourism; and develop an effective, competitive and stable financial system that will enhance economic growth and development.[3]

19. The Australian Agency for International Development estimated that in 2006 Nauru's government debt obligations to external and internal debt holders were AUD 371.4 million, and AUD 264.8 million, respectively, a high burden relative to GDP.[4] By September 2010, overall debt had been reduced – external AUD 69 million and internal AUD 481 million. The lack of a commercial bank, an insurance facility, and developed regulatory environment continues to inhibit Nauru's private sector goals and foreign investment. There is about 90 per cent unemployment. 65 per cent of Nauru's population is under the age of 15 years. Nauru's private sector is very small and employs fewer than 300 people.[5]

20. Nauru imports well over 90 per cent of its foodstuffs and other basic goods, and sea and air transport options are very limited. The provision of electricity and water, both dependent on imported fuel is limited and unreliable.

21. As at its 2009-10 budget, Nauru's GDP was USD 55 million.[6] Donor assistance accounted for 54% of total revenue, principally from Australia, New Zealand, Japan, China, and more recently Russia.[7] Nauru has relied largely on payments for fishing rights (accounting for 13% of its total revenues in 2009/2010) within its exclusive economic zone. Other revenue streams include customs and excise duties (10% of total revenue 2009-10), royalties and dividends from RONPhos (formerly the Nauru Phosphate Corporation) (9%), and the sale of fuel products (7%).[8]

3. p. 10, National Sustainable Development Strategy (Revised 2009).
4. P. 242, Asian Developing Outlook 2012, *www.adb.org/sites/default/files/pub/2012/ado2012.pdf*.
5. P. 16, Mutual Evaluation Report: Anti-Money Laundering and Combating the Financing of Terrorism, Republic of Nauru, July 2012: *www.apgml.org/documents/docs/17/Nauru_MER1_for%20publication.pdf*.
6. DFAT of Australia, *www.dfat.gov.au/geo/nauru/naurubrief.html*.
7. US Department of State, *www.state.gov/r/pa/ei/bgn/16447.htm*.
8. p. 62, National Sustainable Development Strategy (Revised 2009).

22. Nauru's major trading partners are, for import: Russia, Australia, and the United States (USD 96.2 million in 2009), and for export India, New Zealand, Japan, Australia, and South Korea (USD 42.5 million in 2009).[9]

General information on the legal and taxation systems

23. The President of the Republic of Nauru is both head of government and head of State. S/he is chosen by Parliament from amongst members of Parliament for a three-year term. Cabinet members are appointed by the President from among the members of Parliament. The Government comprises six Ministers (including the President).

24. The Parliament of Nauru is unicameral and has eighteen members which are elected every three years by resident Nauru citizens over the age of twenty. The composition of the Parliament is set out in Article 28 and Schedule 2 of the Constitution. Parliament has the power to increase but not reduce the number of members in Parliament, and may also by legislation change the constituencies and the number of members for each constituency which are set out in Schedule 2. There are no formal political parties. The Parliament chooses a speaker and a deputy speaker from among its members. Nauru is divided into 14 districts, which are grouped into eight electoral constituencies. Two representatives are elected in each constituency except Ubenide, which is composed of four of the smaller districts and has four representatives in Parliament. Parliament recently passed an Act to increase the number of constituencies in Meneng from two to three, which will come into effect at its next general election.

25. The legal system of Nauru is a mixture of common law based on the English model and customary law. The Constitution is the supreme law of the Republic of Nauru. It provides that laws in force in Nauru immediately before its independence continue to apply to the extent that they are not expressly revoked or incompatible with the independent status of Nauru (article 85, Constitution). Moreover, the Custom and Adopted Laws Act of 1971, as amended, adopted some legislation from England and provided as the basic structure underpinning the specific legislative framework the common law and the principles of equity of England as in force at 31 January 1968. To cover areas which were important but not likely to be covered in the Nauruan legislative program, Nauru adopted as law of Nauru all the statutes of general application in England subsumed by chapter headings of Halsbury's Statutes except the ones listed in a schedule to the Act. The laws adopted by Nauru apply with appropriate variations as necessary to the circumstances of

9. Asian Development Bank, *https://sdbs.adb.org/sdbs/KI_fileDownload.jsp?key=NAU&scope=country&file=CT_NAU.pdf.*

Nauru.[10] The Supreme Court of Nauru may take note of and apply movement in the common law and equity since 1968 if it is appropriate.[11]

26. The Supreme Court, headed by the Chief Justice of Nauru, is paramount on constitutional issues, but other cases can be appealed to the two-judge Appellate Court. Parliament cannot overturn court decisions, but Appellate Court rulings can be appealed to Australia's High Court; in practice, however, this rarely happens. Lower courts consist of the District Court and the Family Court, both of which are headed by a Resident Magistrate, who also is the Registrar of the Supreme Court. Finally, there also are two quasi-courts, the Public Service Appeal Board and the Police Service Board, both of which are presided over by the Chief Justice.

27. The hierarchy of laws in Nauru is as follows: (i) the Constitution; (ii) acts of parliament; (iii) subsidiary legislation (regulations) derived from powers within Acts; and (iv) rules or by-laws. The Interpretation Act 2011 sets out provisions and details surrounding regulations, rules, and by-laws. Ratified conventions or treaties that Nauru is party to do not form part of domestic law directly. A treaty to which Nauru has expressed its consent to be bound is not automatically applicable, but relies on domestic legislation being enacted to give the treaty the force of law domestically. Further, the Interpretation Act 2011 sets out that any relevant treaty or other international agreement to which Nauru is a party may be considered when interpreting a written law or statutory instrument in order to: (a) resolve an ambiguous or obscure provision of the law; or (b) confirm or displace the apparent meaning of the law; or (c) find the meaning of the law when its apparent meaning leads to a result that is clearly absurd or is unreasonable (articles 51 and 52, Interpretation Act 2011).

28. The Republic of Nauru does not levy any tax, except minimal customs duties, excise taxes on certain products and certain tourist charges. A broad-based goods and services tax is proposed to be introduced in Nauru.[12]

Overview of commercial laws and other relevant factors for exchange of information

29. The Nauru Corporations Act 1972 provides for the creation of trading companies and holding companies.[13] Changes were made to the Corporations Act in 2004 to ensure that offshore banks cannot be established in Nauru.

10. p. 19, Nauru Legal Sources, Peter H. MacSporran, Solicitor, Black Rock, Victoria.
11. p. 20, Nauru Legal Sources, Peter H. MacSporran, Solicitor, Black Rock, Victoria.
12. p. 19, National Sustainable Development Strategy (Revised 2009).
13. The Republic of Nauru Finance Corporation, known as "RONFIN", was a statutory corporation that was established in 1972 under the Republic of Nauru

30. There are a couple of statutory corporations in Nauru. The Nauru Trustee Corporation was created by the Nauru Trustee Corporations Act 1972. It is a government-owned corporation established to carry on business including the business of trustee, executor, administrator, receiver and agent in Nauru. The Nauru Agency Corporation (NAC) provides all company services for Nauru Corporations. Both are considered Designated Non-Financial Businesses and Professions (DNFBPs) pursuant to Nauru's anti-money laundering legislation.

31. Relevant agencies for exchange of information purposes include the Department of Justice and Border Control, which is responsible for any legal matters and information relating to the Republic of Nauru, and the Department of Finance, which is responsible for all financial matters and issues related to the Republic of Nauru, including taxation and revenue. Nauru lists its Secretary for Justice and Border Control and the Acting Secretary for Finance as its Competent Authorities.

32. Nauru has established an anti-money laundering legal framework (AML/CFT framework) through the enactment of laws such as the Anti Money Laundering Act 2008 (AMLA). Nauru requires the full range of financial institutions to adopt AML/CFT preventative measures under the AMLA. Nauru was admitted as a member of the Asia Pacific Group on Money Laundering ("APG") in July 2007. Nauru's first APG Mutual Evaluation assessing its compliance with the international standards for anti-money laundering and counter-terrorist financing was completed in July 2012.[14]

33. Nauru set up its Financial Intelligence Unit (FIU) in 2004 as an administrative unit with AML/CFT supervisory responsibilities, and it has recently taken steps to make the FIU operational, including appointment of a new FIU Supervisor in October 2011. The FIU is mandated to receive and analyse suspicious transaction reports (STR) and disseminate intelligence to the Office of the Director of Public Prosecutions (ODPP), which provides oversight of subsequent investigations by the Nauru Police Force (NPF). FIU to FIU international cooperation is supported in statute, although legal

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Finance Corporation Act 1972. RONFIN was officially abolished in 2009 by repealing the Republic of Nauru Finance Corporation Act 1972-1998. As RONFIN was a statutory corporation that was not subject to the provisions of the Corporation Act 1972, it was not necessary to undertake winding up procedures under that Act, but rather, the abolition of RONFIN was effected by repealing the Act under which it was established. RONFIN had ceased to operate in approximately 2004, and in 2009 no longer had any staff or directors.

14. Mutual Evaluation Report: Anti-Money Laundering and Combating the Financing of Terrorism, Republic of Nauru, July 2012: *www.apgml.org/documents/docs/17/Nauru_MER1_for%20publication.pdf.*

provisions appear to block the FIU from cooperating with foreign counterparts on supervisory issues. Moreover, the FIU appears to suffer from severe capacity and resource constraints and the few reporting institutions in Nauru have not yet taken the necessary measures to comply with legal requirements.[15]

34. Nauru declared its commitment to the international standards on transparency and exchange of information in 2003. Nauru has been a member of the Global Forum since its beginning. In 2005, the Government stated that the priorities in the future were to implement the necessary legislative and administrative processes to make reforms fully effective, including preparing new financial sector legislation (dealing with banking and insurance), boosting the capacity of the Financial Investigations Unit (FIU) and negotiating Taxation Information Exchange Agreements (TIEAs) by 2012.[16]

35. Nauru commenced negotiations for a TIEA with one jurisdiction, its major trading partner, Australia.

Overview of the financial sector and other relevant professions

36. In the 1990s, Nauru developed an offshore financial centre, a main component of which was offshore banking. In 2003, Nauru instituted a physical presence requirement for offshore banks, having enacted the Corporation (Amendment) Act 2003, which aimed to abolish offshore shell banks and prohibit the granting of new licenses. Nauru authorities also revoked the licenses of all remaining offshore banks, and further enacted the Banking (Amendment) Act 2004 and the Corporation (Amendment) Act 2004.[17] Overall, 400 shell banks were abolished, and anti-money laundering legislation was implemented, including the Anti-Money Laundering Act 2003. Nauru was subsequently removed from the Financial Action Task Force's (FATF) list of non-cooperative countries and territories (NCCTs).[18] Further reforms of the financial sector followed, including the closing of the Bank of Nauru (which has ceased trading, is in liquidation, and will soon be wound up), the Nauru Insurance Corporation and the Republic of Nauru Finance Corporation.[19] In order to further strengthen its AML regime, Nauru issued,

15. See Mutual Evaluation report, p. 8.
16. p. 28 and p. 80, National Development Strategy (Revised 2009).
17. Financial Action Task Force Annual Review of Non-Cooperative Countries and Territories 2005-2006, 23 June 2006.
18. FATF Non-Cooperative Countries and Territories Review, *www.fatf-gafi.org/dataoecd/14/11/39552632.pdf.*
19. p. 62, National Sustainable Development Strategy (Revised 2009), *www.ausaid.gov.au/countries/pacific/nauru/Documents/nauru%20sust%20dev%20strat%20-%20pts1to5.pdf.*

in 2008, an Act to renew the AML legislation to prevent money laundering, to establish a Financial Intelligence Unit and a regime for financial transactions reporting, customer due diligence, record keeping and other obligations of financial institutions, to strengthen law enforcement and enable cooperation with foreign States, and for related purposes.

37. With the abolition of the offshore banking sector in 2004, there is only a relatively small offshore company registry operating in Nauru. The Registrar of Corporations is responsible for the company registration process, keeping of the registry and other functions prescribed under the Corporations Act. At present, in addition to Nauru's state-owned corporations, there are currently 51 corporations, all foreign-owned, registered in Nauru. These companies engage in the following activities: trust services, construction, shipping, power generation, trade consultancy, television, and insurance and re-insurance.

38. Nauru has no operational bank and there is no financial institution offering financial services other than a branch of Western Union; which has offered remittance services in Nauru since 2008, but does not offer accounts nor take deposits.[20] The economy is entirely cash-based and reliant on formal and informal remittance. There are three informal remitters operating on a small scale through a few small businesses on the island. There is no requirement in Nauru for informal remitters to be registered or hold a license to conduct their activities. None of the remitters (formal or informal) offer accounts or take deposits. Most businesses and many individuals hold non-resident bank accounts in Australia and other jurisdictions and financial transactions are conducted via internet banking. These transactions may include payment for services and goods in Nauru.

39. The Chief Justice of Nauru is responsible for administration of the Legal Practitioners' Act 1972. There are three local lawyers, five expatriate lawyers and one pleader (legally trained advocate with permission to plead cases in the court) working for the Government of Nauru. The private bar is made up of one local lawyer and five pleaders. The Barristers and Solicitors (Accounts) Rules 1973 regulates accounts and other relevant financial activities undertaken by barristers and solicitors. There is only one local accountant in Nauru, who works for the Government.

40. There are no longer any insurance businesses operating or registered in Nauru. The Insurance Act 1974 was repealed by the Statute Law Revision Act 2011 and has not been replaced.

41. There are no real estate agencies in Nauru as the vast majority of land is held under customary tenure recognised by customary law. A small amount

20. See APG Mutual Evaluation report, p. 23.

of mostly state owned land has title under non-customary tenure governed by the Lands Act 1976. The President of Nauru must approve any lease or transfer of land. Land may not be transferred inter vivos to a non-Nauruan citizen. Land is regulated by the Lands Act and the determination of ownership and benefits is administered by the Nauru Lands Committee, a statutory body established under the Nauru Lands Committee Act 1956.

Recent Developments

42. The Nauru government is currently considering amending the Corporations Act 1972 to address issues regarding the issuance of bearer shares and the availability of information on beneficiaries and settlors of trusts with a Nauruan resident trustee.

Compliance with the Standards

A. Availability of Information

Overview

43. Effective exchange of information requires the availability of reliable information. In particular, it requires information on the identity of owners and other stakeholders as well as information on the transactions carried out by entities and other organisational structures. Such information may be kept for tax, regulatory, commercial or other reasons. If such information is not kept or the information is not maintained for a reasonable period of time, a jurisdiction's competent authority may not be able to obtain and provide it when requested. This section of the report describes and assesses Nauru's legal and regulatory framework on availability of information.

44. Regarding ownership and identity information, the obligations imposed on companies and partnerships ensure that updated information is generally available either in the hands of public authorities or the entity itself. Those obligations are complemented by the customer due diligence requirements imposed by Nauru's anti-money laundering law on obligated persons. However, corporations may issue bearer shares/share warrants to bearer in Nauru and there are no sufficient mechanisms to ensure that the owners of the bearer shares or share warrants to bearer are known in all circumstances. Moreover, identity and ownership information may not consistently be available in respect of all domestic and foreign trusts with Nauru trustees. Where there are requirements to maintain ownership and identity information, enforcement provisions exist to ensure the availability of such information

and their effectiveness will be considered as part of the Phase 2 peer review of Nauru. For the reasons above, element A.1 is found to be not in place.

45. Companies are required to keep accounting records; however, no retention period is specified in most cases and no requirement is provided concerning underlying documentation. Nauru law does not ensure that reliable accounting records or underlying documentation are kept for partnerships carrying on business in Nauru, foreign companies with a sufficient nexus to Nauru and domestic and foreign trusts foreign trusts with a Nauruan trustee. Hence, element A.2 is found to be not in place.

46. Banks and other financial institutions must comply with detailed customer due diligence obligations and must keep transaction records and customer identification information for at least five years. Element A.3 is therefore found to be in place.

A.1. Ownership and identity information

Jurisdictions should ensure that ownership and identity information for all relevant entities and arrangements is available to their competent authorities.

47. The relevant entities and arrangements of Nauru are companies (ToR A.1.1), which may issue bearer shares (ToR A.1.2), partnerships (ToR A.1.3) and trusts (ToR A.1.4).

Companies (ToR A.1.1)

48. In Nauru, it is possible to establish two types of company under the provisions of the Corporations Act 1972, both of which have limited liability, and which must be limited by share:

- A ***holding corporation***: must have a minimum of one director, a minimum of one and a maximum of 20 shareholders (excluding the holders of share warrants), and one secretary (one of whom shall be a resident secretary and such resident secretary be a registered secretary) (articles 28-29 and 110(3), Corporations Act 1972).
- A ***trading corporation***: must have a minimum of two shareholders, a minimum of two directors (at least one of whom must be a registered director), and one secretary (one of whom shall be resident secretary and such resident secretary be a registered secretary) (articles 28, 103 and 110(3), Corporations Act 1972).

49. As at 1 December 2012, there were 51 corporations registered in Nauru through the Nauru Agency Corporation (NAC), all foreign-owned.

50. A holding corporation, pursuant to Article 30 of the Corporation Act, shall not "carry on business as a factor or broker or as a manufacturer of or dealer, as principal or agent, in goods or raw materials whether the goods or raw materials are ascertained or unascertained and whether they are in existence or are to come into existence in the future" (article 30, Corporations Act 1972).

51. A holding corporation may convert to a trading corporation (subject to the consent of the Register and the issuance of a new certificate of incorporation), but a trading corporation may not convert into a holding corporation (article 21, Corporations Act 1972).

Information held by government authorities

52. All corporations must lodge an application for incorporation with the Registrar of Corporations (the Registrar) (article 15, Corporations Act 1972). The Registrar is responsible for the company registration process, keeping of the registry and other functions prescribed under the Corporations Act.

53. Proposed corporations must subscribe their name to a memorandum and comply with the requirements of the registration form, both of which must be submitted to the Registrar of Corporations along with the articles of incorporation and prescribed fee (article 15, Corporations Act 1972).

54. The memorandum must contain the name and type of corporation, the amount of share capital with which the corporation proposes to be registered and the division thereof into shares of a fixed amount. The full names and address of the subscribers are required only for trading corporations (article 16, Corporations Act 1972), and not for holding corporations.

55. The articles of incorporation must be signed by each subscriber to the memorandum (article 22, Corporations Act 1972). A copy of such resolution to alter or amend its articles must be lodged with the Registrar within one month of its being passed (article 24(2), Corporations Act 1972).

56. The certificate of incorporation is valid for one year and renewable thereafter on an annual basis, by fee (articles 15(4), Corporations Act 1972).

57. All corporations must submit to the Registrar an annual return signed by a director or secretary of the corporation, containing the address of its registered office and the address at which the register of members is kept (if other than the registered office), the particulars of the directors, managers, secretaries and auditors of the corporation at the date of the annual return, and certifying the number of transfers of shares since the last annual return or incorporation, the number and an account of bearer shares held, the number of the members of the corporation, and whether it is a holding or trading corporation. The annual return must be in accordance with the form prescribed by regulations, and must be accompanied by the prescribed annual

fee. Trading corporations must also provide a list of shareholders as part of their annual return. This requirement does not apply to holding corporations. The annual return must be submitted not earlier than the twenty-eighth day before the date of lodgement (article 133, Corporations Act 1972).

Ownership and identity information kept by the companies

58. All corporations must have a registered office in Nauru (article 101, Corporations Act 1972). Every corporation must keep at its registered office a register of its directors, registered directors and secretaries, including names and usual addresses. Upon such appointments ceasing or new appointments commencing, information must be updated in the register within one month. This register shall be open to the inspection of any director, member and auditor of the corporation without charge (article 111, Corporations Act). The resident secretary is responsible for compliance by the corporation with these requirements (article 101, Corporations Act 1972).

59. All corporations must also keep a register of its members (except in respect of any bearer shares issued by it) containing, among other things, the names and addresses of the members and a statement of the shares held by each member: distinguishing each share by its number, if any, or by the number, if any, of the certificate evidencing the member's holding and of the amount paid or agreed to be considered as paid on the shares of each member, and the date of every allotment of shares to members and the numbers of shares comprised in each allotment (article 126, Corporations Act 1972). The register must be updated upon memberships ceasing or new members commencing (article 126(1), Corporations Act. Pursuant to article 85 of the Corporations Act, a corporation shall register a transfer of shares when a proper instrument of transfer has been delivered. Except in respect of any bearer shares issued by it, a corporation must not register a transfer of shares unless a proper instrument of transfer has been delivered to the corporation (article 85, Corporations Act 1972).

60. The register of members is to be kept at the registered office of the corporation and be open to the inspection of any member without charge, and in the case of a trading corporation, of any other person on payment for each inspection of one dollar or such less sum as the corporation requires (article 127-128(2), Corporations Act 1972).

61. Moreover, any member or, in the case of trading corporation, any member or other person may request the corporation to furnish him with a copy of the register as it relates to names, addresses, number of shares held and amounts paid on shares, for a fee. The information shall be provided within 30 days unless otherwise prescribed by the Registrar (article 128(3), Corporations Act 1972).

Information held by service providers

62. Nauru has an AML/CFT regime, established under the Anti-Money Laundering Act, 2008 (AMLA. The AMLA imposes obligations on a wide range of entities and professionals (the obligated persons). In this regard, to the extent that a company uses the services of the obligated persons, the AML law will be applicable and the obligated person is required to conduct customer due diligence on the company.

63. The AMLA provides for an activity-based definition to identify the persons subject to the AML legislation. This definition mirrors the definition of financial institutions in the FATF's Glossary and includes all 13 financial activities required under the FATF Standards. At present, only Western Union is providing financial services but the scope of the definition is wide enough to cover all other obligated financial services, if they were to be offered in Nauru in the future.

64. The definition of financial institution also covers persons or entities engaged in non-financial activities, including (Schedule to the AMLA): trust or company service providers (TCSPs)[21]; and legal practitioners and accountants when preparing or carrying out certain transactions for their clients.[22]

65. Pursuant to the Corporations Act, every corporation shall have one or more secretaries one of whom shall be a resident secretary (article 110(3), Corporations Act 1972). Resident secretaries are listed as AML obligated persons as per the provision above.

66. Part 5 of the AMLA (ss. 26-37) deals with customer due diligence (CDD), record keeping and other obligations of AML obligated persons.

67. Article 27(1) of the AMLA establishes that obligated persons under the Act shall identify the identity of a customer on the basis of an identification record. "Identification record" means information relating to the identification of a person and the verification of the person's identity,

21. TCSPs are AML obligated persons when (a) forming legal persons, partnerships or other legal arrangements; (b) are legal persons or legal arrangements; (c) providing a registered office, business address or accommodation, correspondence or administrative address for a company, a partnership or other legal persons or legal arrangements; (d) acting as, or arranging for another person to act as, a trustee of an express trust; or (e) acting as, or arranging for another person to act as, a nominee shareholder for another person.

22. The following transactions are covered: (a) buying or selling real estate; (b) managing client money, securities or other assets; (c) managing bank, savings or securities accounts; (d) organising contributions for the creation, operation or management of companies; and (e) creating, operating or managing legal persons or legal arrangements and buying and selling of business entities.

including; (a) where the person is a natural person, the details; (i) of the person's name, address and occupation; and (ii) the national identity card or passport or other applicable official identifying document; (b) where the person is a body corporate, the details; (i) of the person's name, legal form, registration number and registered address; (ii) of the person's directors, principal owners and beneficiaries and ownership structure; and (iii) of the provisions regulating the power to bind the person (article 2, AMLA).

68. Further, obligated persons under the Act shall verify the identity of the customer on the basis of reliable and independent source documents, data or information or other evidence as is reasonably capable of verifying the identity of the customer, when entering in a continuing business relationship. In addition, article 21(4) requires obligated persons to identify, and verify the identity of, the person or persons for whom, or for whose ultimate benefit, a transaction via a continuing business relationship is being conducted.

69. Article 36(4) of the AMLA specifically requires obligated persons to conduct ongoing due diligence, thus the information held by obligated persons must be kept up-to-date.

Foreign Companies

70. A company incorporated outside Nauru which has a place of business in Nauru or is carrying on business in Nauru must register as a foreign corporation with the Minister under article 224-231 of the Corporations Act (article 224(4), Corporations Act 1972).

71. Under section 2 of the Corporations Act, foreign corporations are defined as "a corporation, company, society, association or other body incorporated outside Nauru, or an unincorporated society, association or other body which under the law of its place of origin may sue or be sued or hold property in the name of the secretary or other officer of the body or association duly appointed for that purpose and which does not have its head office or principal place of business in the Republic".

72. "Carrying on business" includes: (a) establishing or using a share transfer or share registration office or administering, managing or otherwise dealing with property situate in Nauru as an agent, legal personal representative or trustee, whether by servants or agents or otherwise; (b) in the case of a foreign corporation in respect of which the Minister has by notice in the Gazette so specified, suffering or permitting the corporation's own shares to be dealt with, issued, transferred or made the subject of options or agreements within Nauru or permitting or suffering dealings, transfers or agreements to sell or purchase or options in respect of securities, notes or rights issued by it to the public, or by reason of which the public might acquire an interest in the corporation, to be made within Nauru (article 224(2), Corporations Act

1972). Carrying on business is not contemplated by becoming a party to any action or suit nor conducting one isolated transaction that is completed within a period of thirty-one days (article 224(3), Corporations Act 1972).

73. Within one month after it establishes a place of business or commences to carry on business in Nauru, every foreign corporation must lodge with the Registrar for filing:

- a certified copy of the certificate of its incorporation or registration in its place of incorporation or origin or a document of similar effect;
- a certified copy of its charter, statute or memorandum and articles or other instrument constituting or defining its constitution;
- a list of its directors and officers;
- where a list includes directors resident in Nauru who are members of the local board of directors, a memorandum duly executed by or on behalf of the foreign corporation stating the powers of the local directors;
- a memorandum of appointment or power of attorney binding on the corporation and verified in the prescribed manner, stating the name and address of a registered corporation agent in Nauru authorised to accept on its behalf service of process and any notices required to be served on the corporation together with the written consent of such agent to the appointment;
- notice of the situation of its registered office in Nauru; and,
- a declaration in the prescribed form setting out particulars of its authorised capital (article 225, Corporations Act 1972).

74. Any information lodged with the Registrar must be updated within one month of its change (article 226, Corporations Act 1972).

75. Every foreign corporation shall have a registered office in Nauru and the name of the corporation shall be displayed outside the place where the registered office is situated and such office shall be open to the public for at least two hours each day (article 225(3), Corporations Act 1972).

76. Every foreign company that wishes to establish a place of business or commences to carry on business within Nauru must appoint a registered corporation agent authorised to accept on its behalf service of process and any notices required to be served on the corporation (article 225(1)(e), Corporations Act 1972). Where a registered corporation agent ceases to be an agent of a foreign corporation, it has 21 days after the agent ceases to be such to appoint another registered corporation agent as its agent and lodge with the Registrar a memorandum of his appointment and a copy of the deed or document or power of attorney (article 225, Corporations Act 1972).

77. The AMLA lists as persons required to conduct CDD, trust and company service providers (i) acting as, or arranging for another person to act as, a director or secretary of a company; or (ii) providing a registered office, business address or accommodation, correspondence or administrative address for a company. The definition provided under the AMLA appears to cover Nauruan registered corporation agents.

78. Pursuant to the AMLA, the trust and company service providers must verify the identity of their corporate customers including the customer's directors, principal owners and beneficiaries and details of the ownership chain. Therefore, it appears that a registered corporation agent will collect ownership information of the foreign company during the customer due diligence process. A follow up of this issue will take place in the Phase 2 peer review of Nauru.

Regulated entities

79. The licensed sectors in Nauru are banks and financial institutions (aside from trust business, which is dealt with in section A.1.4 of this report). The key piece of legislation for licensed entities is the Banking Act 1975. It is noted, however, that there are currently no operational banks in Nauru.

80. Banks (commercial and trading or savings) and financial institutions are specifically regulated by imposing a requirement that the business be carried on by a license holder. These licensing regulations impose additional requirements to lodge identity information as a condition of the license. Pursuant to the Banking Act 1975, the Registrar of Banks is the oversight body in respect of this license.

81. Applications for a license must be completed in the prescribed form (article 5(1), Banking Act 1975). A license may be granted for a specified period not exceeding ten years (article 5(5), Banking Act 1975). The Minister may make regulations requiring banks and financial institutions to supply to the Registrar such information as the Registrar may from time to time require to be supplied to as to banking transactions carried on in Nauru, the transfer of moneys and property into and out of Nauru in the course of banking transactions, and such other matters as the Minister considers it necessary to know in order to ascertain whether or not there has been a breach of any condition of a license or any provision of the Banking Act (article 6, Banking Act 1975).

Nominees

82. The Corporations Act does not require nominees to have information regarding the identity of the person on whose behalf the shares are held. No indication needs to be given in the share registers or information filed with

the Registrar when shares are held by nominees either. Notwithstanding the above, Nauru's AML regime covers trust and company service providers, defined as acting as, or arranging for another person to act as, a nominee shareholder for another person (article 17(e), AMLA). Therefore, all nominee shareholders acting by way of business would be covered by the AMLA.

83. AML obligated persons, including persons acting as nominee shareholders, are required to carry out CDD on their customers. Where the customer (shareholder) changes, then this should trigger a new obligation to conduct CDD in respect of the new customer.

84. The obligations established under the AML law will not apply when the person who is a nominee is not acting by way of business. In that case, there appear to be no obligations imposed on a nominee to retain identity information on the persons for whom they act as the legal owner. However, this gap appear to be not to be material as only a limited number of nominees would be excluded from the scope of the AMLA, particularly given the small number of corporations registered in Nauru. This issue will be followed up the Phase 2 review of Nauru.

Conclusion

85. The Corporations Act requires the filing of information on the legal ownership of trading corporations with the Registrar. It also requires all corporations to maintain a register of their shareholders (other than holders of bearer shares). Financial institutions and trust and company service providers (including persons acting as nominee shareholders by way of business) are required under anti-money laundering legislation to perform customer due diligence and identify the owners of corporate customers.

Bearer shares *(ToR A.1.2)*

86. Pursuant to article 46 of the Corporations Act 1972, a corporation may issue shares to bearer, if so authorised by the articles of association. Such bearer shares must be fully paid up and the corporation may exchange any fully paid up share standing in its register of members in the name of a member for a bearer share upon the surrender of the certificate of such share. The bearer share so issued must bear the same number as the share certificate so surrendered. The corporation may provide by coupons or otherwise for the payment of future dividends on bearer shares issued by it and the document of title to a bearer share issued to the bearer shall be known as a "share warrant" (article 46, Corporations Act).

87. The share warrant may be transferred by delivery (articles 46(2) and 85(3), Corporations Act 1972).

88. A corporation that issues share warrants to bearer must keep a register of share warrants. If the person to whom the warrant is issued was already a member of the corporation, the corporation must strike out the person's name from its register of members (article 49(1)(a), Corporations Act 1972). The corporation will enter into the register (i) the fact of the issuance of the warrant, (ii) a statement of the shares represented by each warrant, distinguishing each share by its number; (iii) the date of the issue of the warrant; (iv) the date of the surrender of the warrant (article 49(1(b), Corporations Act 1972). The register does not need to contain information concerning the holder of the share warrants or their transfer in the register of share warrants.

89. When the bearer of the share warrant surrenders the warrant for cancellation, s/he is entitled to have his/her name entered into the register of members (article 47, Corporations Act 1972). Alternatively, the bearer of the share warrant may lodge with the Nauru's Corporate Registrar for registration a share warrant, accompanied by a request in the prescribed form. The Registrar must enter into the register the serial number of the request, the name of the corporation, the numbers of the shares and the class, if any, or description thereof, the name of the beneficial owner, the date upon which the request was lodged and the time of its lodgement, the name and address of the person to whom a certificate as to the contents of the register in respect of the entry may be given, the name and address of the applicant, and the number of the caveat, if any, to which the entry is subject (article 86, Corporations Act).

90. There is no mechanism to ensure that the corporation would have knowledge of the owners of share warrants until the warrant is cancelled or presented for registration. This represents a gap in the availability of information on the owners of corporations with share warrants to bearer.

91. Moreover, the Corporations Act provides for a complex procedure whereby a person is able to have the government form a holding company on his or her behalf, followed by the transfer of the ownership interest in the company to a trustee corporation for that person's benefit. In this way, the company may be formed without the necessity of having any shares or share warrants issued to the incorporators (article 15(10) – (25), Corporations Act 1972).

92. Pursuant to the Corporations Act, every corporation shall have one resident secretary (article 110(3)) and, all corporations lodging a document with the Registrar under the provisions of the Corporations Act must use a registered corporation agent to do so (article 8). Secretaries fall into the definition of trust or company service providers as provided in the Nauruan AML regime (see section ToR A.1.1 *Information held by service providers*) and registered corporation agents seem to do as well. It is possible that the identity of bearer shares holders is disclosed to the AML obligated persons as part of the CDD process, as the trust and company service providers are

required to identify the corporate customer's principal owners and ownership chain. However, the Nauru AML regime does not provide for details of how obligated persons will deal with cases where corporate customers have issued bearer shares. Therefore, there is no certainty on whether this information would be consistently available.

93. The Nauruan authorities informed that in the last five years no bearer shares have been presented to the NAC in its role as resident secretary of all active corporations. However, this does not exclude bearer shares issued prior to that date.

94. Corporations must include information on the number of bearer shares they have issued in their annual returns filed with the Registrar.

Partnerships *(ToR A.1.3)*

95. Partnerships in Nauru are governed the Partnership Act 1976. That Act defines a partnership as the relationship which subsists between persons carrying on a business in common with a view to profit, but does not include the relationship between members of a corporation or a foreign corporation registered under the Corporations Act 1972 or incorporated by any other law (article 2, Partnership Act 1972). There is no limited partnership legislation in Nauru.

Ownership and identity information provided to government authorities

96. Every partnership having a place of business in Nauru and carrying on business under a name other than the name of its partners must register within 14 days of commencing business pursuant to the Business Names Act 1976 (article 9, Business Names Act 1976). To register, partnerships must provide a statement in writing in the prescribed form containing the business name; the general nature of the business; the principal place of the business; the present Christian name and surname, any former Christian name or surname, the nationality, the usual residence and the other business occupation, if any, of each of the individuals who are partners and the corporate name and registered or principal office of every corporation which is a partner (article 7(1), Registration of Business Names Act 1976). Changes in registration information must be notified to the Registrar within 14 days of taking place by sending by post or delivering to the Registrar a statement in writing in the prescribed form specifying the nature and date of the change, with the form signed, and where necessary verified, in like manner as the statement required on registration (article 10, Business Names Act 1976).

97. The statement required for the purpose of registration must be signed either by all of the individuals who are partners and by a director or the secretary of all corporations which are partners, or by some individual who is a partner or a director or the secretary of some corporation which is a partner and in either of the last two cases must be verified by a statutory declaration made by the signatory (article 8, Business Names Act 1976).

98. Partnerships must exhibit the certificate of registration (or a certified copy of it) provided by the Registrar in a conspicuous position at the principal place of business in Nauru of the partnership (article 15(1), Business Names Act 1976).

99. The partner of a firm may be called upon by the Secretary for Justice to provide information with the purpose of ascertaining whether or not he or the firm of which he is a partner should be registered under provisions of the Business Names Act, or an alteration made in the registered particulars (article 14(1), Business Names Act 1976).

100. Partnerships having a place of business in Nauru and carrying on business under the name of its partners are not required to register under the Business Names Act 1976. Given that the names of the partners should be able to be identified, any gap concerning ownership information appears not to be material at this stage. Moreover, Nauru also requires that prescribed businesses obtain a business license, pursuant to the Business License Act 2011. Therefore, when a domestic or foreign partnership carries on a prescribed business in Nauru, information on the partnership (including its name which shall correspond to the name of all partners) is kept by the Nauruan licensing authorities. The prescribed businesses should be listed in a regulation. This matter will be followed up in the Phase 2 of Nauru.

Information held by service providers

101. The AMLA requires financial institutions and designated service providers (including TCSPs, lawyers, and accountants) to identify their customers (see section A.1.1 of this report).

102. There is no legal requirement for the establishment of a partnership through a service provider or a legal practitioner. However, if a service provider or a legal practitioner is involved, the general CDD requirements to maintain and update ownership and identity information under the AMLA will apply (article 27, AMLA).

Conclusion

103. Every partnership having a place of business in Nauru and carrying on business under a name other than the name of its partners must register pursuant to the Business Names Act 1976. The statement of registration must include the names and address of all partners and this information must be maintained and updated when there is a change in ownership. Partnerships established through a service provider or legal practitioner would require ownership and identity information to be maintained and updated under AML requirements. Partnerships carrying on business under the name of its partners are not required to register. Given that the names of the partners should be able to be identified, any gap concerning ownership information appears to be not material at this stage and can be followed up in the Phase 2 of Nauru.

Trusts *(ToR A.1.4)*

104. This section deals with domestic and foreign trusts. Trusts can be created under the laws of Nauru. Moreover, there are no obstacles that prevent a Nauruan resident from acting as a trustee or administrator of a foreign trust.

105. It is also conceivable that a trust could be created which has no connection with Nauru other than that the settlor chooses the trust to be governed by Nauru law. In that event, there may be no information about the trust available in Nauru.

Domestic Trusts

106. Nauru, as a common law jurisdiction, inherited the English concept of trusts. This includes express, discretionary, implied and other forms of trusts. Trusts can also be for charitable and non-charitable purposes.

107. In addition to case law, the legal framework applicable to trusts in Nauru includes the Foreign Trusts Estates and Wills Act 1972, the Corporations Act, and the Nauru Trustee Corporations Act.

108. Pursuant to the Custom and Adopted Laws Act of 1971, Nauru adopted England's common law, statutes of general application and the principles of equity as in force at 31 January 1968 (with the exception of statutes specifically rejected in that act). The Supreme Court of Nauru may take note of and apply changes in common law and equity in England since 1968 if it is appropriate to the circumstances of Nauru.[23] Among the English statutes that can be considered as adopted by Nauru are the Trustee Act 1925 and the Public Trustee Act

23. p. 20, Nauru Legal Sources, Peter H. MacSporran, Solicitor, Black Rock, Victoria.

1906. The adopted English laws have force and effect in Nauru only insofar as the circumstance of Nauru and the limits of its jurisdiction permit and only so far as they are not inconsistent with the provisions of the Custom and Adopted Laws Act.

109. For a non-charitable trust to be valid under English common law, the trust needs to meet the three certainties: the certainty of intention, the certainty of subject matter and the certainty of object.[24] This means that a trust is only valid if evidenced by a clear intention on behalf of the settlor to create a trust, clarity as to the assets that constitute the trust property and identifiable beneficiaries (Knight v. Knight (1849) 3 Beav 148). A written declaration of trust may not exist, and when it does it may not identify the settlor. However, trustees have a duty of care to act in accordance with the wishes of the settlor. As a matter of good practice trustees should keep sufficient records to enable them to perform their duties.

110. Trustees should obtain "good receipt" from beneficiaries when they distribute trust property. This requires trustees *inter alia* to establish that the person receiving the trust property is the correct beneficiary of the trust property being distributed (Evans v. Hickson (1861) 30 Beav 136 and Re Hulkes (1886) 33 Ch D 552).

111. There is no case law in Nauru's courts addressing the extent of trustee duties. There are cases addressing implied trusts, in which customary law was applicable. Nauruan customary law applies in very restricted circumstances: and generally deal with situations affecting Nauruans only (e.g. succession rights concerning citizens of Nauru). When reviewing those cases, the Nauruan Supreme Court found that customary law prevailed over English rules of equity (Capelle v Dowaiti (1972), and In re Bop (1969)). It is difficult to draw any certainty from these cases concerning the application of English common law or the extent of trustee duties in Nauru. However, it can be inferred that in all situations in Nauru where customary law does not apply, English common law and rules of equity can be relied upon. Thus, it appears that cases involving trusts with foreign elements (e.g. settlors and/or beneficiaries) English common law and equity principles ought to apply. However, the issue remains largely untested. A more in-depth assessement will be considered as part of the Phase 2 review of Nauru.

112. Nauru's Foreign Trust Estates and Wills Act provides for the establishment of purpose trusts. A purpose trust is defined negatively as a trust *other than*: (a) a trust for the benefit of particular individual persons whether or not immediately ascertainable; and (b) a trust for the benefit of some aggregate

24. Charitable trusts are purpose trusts and as such do not require identifiable beneficiaries and accordingly certain fiduciary obligations of trustees towards beneficiaries do not apply.

of individual persons ascertained by reference to some personal relationship (article 6(4)). The Act requires that at least one trustee of a purpose trust should be a trustee corporation (article 6(2)). The trustee corporation is required to keep the trust deed (article 6(v)). Further, the Act provides that the probate of a foreign will, or letters of administration of a foreign estate, will only be granted if one of the executors, in the case of a will, or administrators in the case of an estate, is a trustee corporation (article 9(3)(4), Foreign Trusts, Estates and Wills Act 1972).

113. Under the Corporations Act 1972, the Minister is authorised to declare a corporation (other than a holding corporation) to be a registered trustee corporation (article 73, Corporations Act 1972). As such, the Nauru Trustee Corporation has been incorporated, and has all the powers of a trading corporation incorporated under the Corporations Act 1972 (article 17, Nauru Trustee Corporations Act 1972). The Nauru Trustee Corporation may be appointed as a trustee (acting solely or jointly) under any will, settlement or other instrument creating a trust, or to perform any trust or duty authorised by the Act (article 6(1), Nauru Trustee Corporations Act 1972). As mentioned above, in relation to trusts that are not purpose trusts, there is no obligation to appoint the Nauru Trustee Corporations (or any Nauru trustee corporation) as a trustee for those trusts.

114. On an annual basis, trustee corporations must report to the Minister as to the trusts undertaken and declined by it during the period preceding such report and every such report shall be laid before Parliament by the Minister within fourteen days of its receipt. The affairs of specific trusts are not disclosed annual reports (article 17, Nauru Trustee Corporations Act).

115. Trustee corporations, including the Nauru Trustee Corporation, are subject to the Nauru AML requirements (please see below).

Information maintained by service providers

116. The AMLA places CDD obligations on financial institutions and designated non-financial businesses and professions, including trust service providers when (a) forming trusts; (b) acting as, or arranging for another person to act as a trustee; (c) providing a registered office, business address or accommodation, correspondence or administrative address for a trust; and (d) acting as, or arranging for another person to act as, a trustee of an express trust (s. 27 of the AMLA and s. 17 of the Schedule to the AMLA).

117. However, there is no guidance in the AMLA concerning specific customer identification requirements in the case of trusts. The AMLA establishes that obligated persons shall verify the identity of the customer on the basis of reliable and independent source documents, data or information or other evidence as is reasonably capable of verifying the identity of the

customer, when entering in a continuing business relationship (article 27(1), AMLA). It is reasonable to expect that, based on this provision, trustees are required to identify the settlor of a trust as the "customer"; however there is no guarantee that the settlor will be treated as a customer in all cases. This issue will be followed up in the Phase 2 review of Nauru.

118. In addition, the AMLA requires obligated persons to verify the identity of, the person or persons for whom, or for whose ultimate benefit, a transaction via a continuing business relationship is being conducted (article 21(4), AMLA). It is reasonable to expect that the beneficiaries of a trust would be identified by adhering to the provisions of the AMLA. This issue will be followed up in the Phase 2 review of Nauru.

Foreign trusts

119. Under Nauru's laws, there are no obstacles preventing a Nauru resident from acting as a trustee or administrator of a foreign trust. Foreign trusts will be typically governed by foreign law, so it is unclear whether and which common law duties might apply with respect to these arrangements.

120. The AMLA does not distinguish between domestic and foreign trusts. Accordingly, a trust service provider is subject to the customer identification requirements of the AMLA irrespective of whether the trust is a domestic or foreign one. However, as mentioned above, there is no guidance in the AMLA concerning specific customer identification requirements in the case of trusts.

Conclusion

121. Nauru, as a common law jurisdiction, inherited the English concept of trusts. There is no case law in Nauru addressing the extent of trustee duties. However, Nauru adopted England's common law, statutes of general application and the principles of equity as in force at 31 January 1968. English common law requires trustees to identify the settlor and beneficiaries of a trust; however, its application in Nauru remains untested.

122. Since foreign trusts will be typically governed by foreign law, and it is unclear whether and which common law obligations would apply with respect to these arrangements, a gap remains concerning the requirement to identify settlors and beneficiaries of those foreign trusts.

123. A trust service provider is subject to the customer identification requirements provided under anti-money laundering legislation irrespective of whether the trust is a domestic or foreign one. There is no guidance in the AMLA concerning specific customer identification requirements in the case of domestic trusts or foreign trusts.

124. It appears, therefore, that the ownership information may not be consistently available in all cases. Nauru should ensure the availability of ownership and identity information in respect of settlors and beneficiaries of domestic and foreign trusts in all cases.

Foundations *(ToR A.1.5)*

125. There are no laws concerning the establishment of foundations in Nauru.

Enforcement provisions to ensure availability of information *(ToR A.1.6)*

126. The existence of appropriate penalties for non-compliance with key obligations is an important tool for jurisdictions to effectively enforce the obligations to retain identity and ownership information.

Companies

127. Pursuant to the Corporations Act 1972 a company is deemed incorporated only after being duly registered with the Registrar (article 15, Corporations Act 1972). If the registration procedure is not properly concluded, legal personality is not acquired and, therefore, shareholders are fully liable in their own name for any liability incurred. Moreover, any director or officer of a corporation who permits a corporation to carry on business after the expiry of its certificate of incorporation and before a current certificate of incorporation has been issued shall, unless the Minister otherwise directs, be personally liable for the debts and liabilities of the corporation incurred during such period as the corporation carries on business without a current certificate of incorporation (article 15(6), Corporations Act 1972).

128. The person in charge of the registered office of the corporation who fails to fulfil any obligations pertaining to any requirements of the Corporations Act as to the production of the register is liable to the same penalties as if he were an officer of the corporation who was in default (article 129, Corporations Act). Moreover, if the name of a person is without sufficient cause entered into or omitted from the register, or the register is not updated, or if there is unnecessary delay in doing so, the person aggrieved or any member of the corporation may lodge an application with the Registrar for rectification of the member registry, and the Registrar may refuse the application or may order rectification of the register and payment by the corporation of damages sustained by any party to bear the costs and expenses of and incidental to the application (article 130(1), Corporations Act 1972).

129. Any person who contravenes or fails to comply with the provisions of the Corporations Act is guilty of an offence and is liable on conviction to a fine of AUD 100 (article 241(1), Corporations Act 1972).

130. Registered directors have a statutory limitation on their liability for "misfeasance" to their acts of wilful misconduct, default or neglect (articles 103(11) and 110(4).

131. A corporation may be wound up compulsorily if default is made by the corporation in lodging any annual or other statutory return or lodging any statutory report or in holding any statutory meeting (article 179(1)(b), Corporations Act 1972).

132. A corporation may be wound up compulsorily if on the petition of the Minister it appears that (i) the corporation has persistently been in breach of the Act; (ii) the corporation has failed to pay any penalty or fee which under this Act it is liable to pay; (iii) the corporation has failed to renew its certificate of incorporation for a period of ninety days after the same should have been renewed (article 179(1)(g), Corporations Act 1972).

Foreign Companies

133. Foreign corporations which have a place of business in Nauru or are carrying on business in Nauru for longer than one month must register as a foreign corporation or are guilty of an offence (article 224(4)(5), Corporations Act 1972). Pursuant to article 241 of the Corporations Act 1972, in the absence of a specified penalty, general penalty provisions apply, including that a person may be found guilty of an offence and is liable on conviction to a fine of AUD 100.

Regulated Entities

134. Any banking business carried out in Nauru which is not authorised by a license under the Corporations Act commits an offence and is subject to a penalty of AUD 2 000 and three years imprisonment for an individual; or for a body corporate a penalty of AUD 10 000 (article 20(1), Banking Act 1975).

135. A person commits an offence if the person contravenes or fails to comply with any other provision of the Banking Act for which no penalty is specified, or being a director or manager of a bank or financial institution licensed under the Banking Act fails to take all reasonable measures to secure compliance by the bank or financial institution to the Act, is subject to a penalty of AUD 500 and 6 months imprisonment for an individual, or for a body corporation AUD 5 000 (article 20(2), Banking Act 1975.

136. Further, a license granted by the Registrar of Banks may be revoked for contravention of any regulations requiring banks and financial institutions to supply to the Registrar such information as the Registrar may from time to time require to be supplied to as to banking transactions carried on in Nauru, the transfer of moneys and property into and out of Nauru in the course of banking transactions, and such other matters as the Minister considers it necessary to know in order to ascertain whether or not there has been a breach of any condition of a license or any provision of the Banking Act (article 21, Banking Act 1975).

Partnerships

137. Failure of a partnership to register and to maintain registration information with the registrar, without reasonable excuse, under the provisions of the Business Names Act, will result in every partner in the firm so in default, guilty of an offence, and liable to a fine of AUD 10 for every day during which the default continues, and the Court shall order a statement of the required particulars or change in the particulars to be furnished to the Registrar within such time as may be specified in the order (article 11, Business Names Act 1976).

138. Further, where any statement required to be furnished to the registrar knowingly provides false information, that person is guilty of an offence and is liable to imprisonment for three months and to a fine of one hundred dollars (article 13, Business Names Act 1976).

139. Failure of a partnership to exhibit the certificate of registration (or a certified copy of it) provided by the Registrar in a conspicuous position at the principal place of business in Nauru of the partnership will result in every partner in the firm to be guilty of an offence and liable to a fine of one hundred dollars (article 15(1), Business Names Act 1976).

Trusts

140. Trustees who are obligated persons under the AMLA are subject to the penalties provided in that act (see below). Failure to fulfil any of his/her duties under common law by the trustee may lead to a risk of being sued by the settlor and/or the beneficiaries of the trust.

AML

141. Powers to enforce compliance with the CDD requirements in the AMLA are contained in article 32. If an obligated entity contravenes the CDD obligations, then it is guilty of an offence punishable on conviction: in the case of an individual – by a fine not exceeding AUD 50 000, or

imprisonment not exceeding 15 years, or both; or in the case of a body corporate – by a fine not exceeding AUD 500 000.

142. Powers to enforce compliance with the record-keeping requirements in the AMLA are contained in article 35(6). If an obligated entity contravenes the record keeping obligations, then it is guilty of an offence punishable on conviction: in the case of an individual – by a fine not exceeding AUD 50 000; or in the case of a body corporate – by a fine not exceeding AUD 500 000.

143. The effectiveness of the enforcement provisions which are in place in Nauru will be considered as part of the Phase 2 Peer Review.

Determination and factors underlying recommendations

Determination	
The element is not in place.	
Factors underlying recommendations	**Recommendations**
Identity information on the owners of bearer shares and share warrants to bearer may not be available in relation to corporations.	Nauru should take necessary measures to ensure that robust mechanisms are in place to identify the owners of bearer shares and share warrants to bearer in relation to corporations.
Identity and ownership information may not consistently be available in respect of (i) domestic trusts and (ii) foreign trusts with a Nauruan trustee.	Nauru should ensure the availability of ownership and identity information in respect of settlors and beneficiaries of domestic and foreign trusts in all cases.

A.2. Accounting records

Jurisdictions should ensure that reliable accounting records are kept for all relevant entities and arrangements.

144. The *Terms of Reference* sets out the standards for the maintenance of reliable accounting records and the necessary accounting record retention period. It provides that reliable accounting records should be kept for all relevant entities and arrangements. To be reliable, accounting records should:(i) correctly explain all transactions; (ii) enable the financial position of the entity or arrangement to be determined with reasonable accuracy at any time; and (iii) allow financial statements to be prepared. Accounting records should further include underlying documentation, such as invoices, contracts, *etc*. Accounting records need to be kept for a minimum of five years.

General requirements (ToR A.2.1) Underlying documentation (ToR A.2.2) Document retention (ToR A.2.3)

Companies

145. Pursuant to article 134 of the Corporations Act, every corporation must keep proper accounts and records to with respect to: (a) all sums of money received and expended by the corporation, specifying the items or matters in respect of which the receipt or expenditure took place; (b) all sales and purchases of goods by the corporation; (c) all assignments of rights or assumption of liabilities by the corporation; (d) all transactions of the corporation, or affecting the assets or liabilities of the corporation; and (e) the assets and liabilities of the corporation (article 134(1), Corporations Act 1972). Failure to comply with this provision is an offence, and any person who is found guilty is liable on conviction to a fine of AUD 500 and to imprisonment for six months in respect of each such offence (article 241(2), Corporations Act 1972).

146. Accounts of a corporation shall be prepared in so far as regulations prescribe, in the manner prescribed. They must also be presented to such meetings, lodged at such times, be accompanied by such declarations and reports, have attached to such declarations and reports such annexes, schedules or details, and be circulated, as prescribed (article 136, Corporations Act 1972).

147. Further, the corporation's accounts are to be kept at the registered office of the corporation or at such other place as the directors think fit and shall at all times be open to inspection by any director and shall be kept in such manner as to enable them to be conveniently and properly audited (article 134(2), Corporations Act 1972). Failure to comply with this provision is an offence, and any person who is found guilty is liable on conviction to a fine of AUD 500 and to imprisonment for six months in respect of each such offence (article 241(2), Corporations Act 1972).

148. Moreover, holding corporations must file annual returns accompanied by a certificate from a registered corporation auditor (article 133(6), Corporations Act 1972). In the certificate, the auditor must state that proper accounts of the corporation for the relevant period have been kept and a balance sheet and profit and loss account have been prepared and audited. The registered corporation auditor must retain a copy of the accounts to which his or her certificate relates for six years (article 133, Corporations Act 1972).

149. Every trading corporation shall supply to any of its members who make written application for it a copy of the most recent audited profit and loss account and balance sheet together with a copy of the auditor's comments, if any (article 135(1), Corporations Act 1972). For both holding and

trading corporations, at any meeting at which any member so requires, the directors shall either lay before the meeting a profit and loss account of the corporation and a balance sheet made up to a date not more than twelve months before the date of the meeting, or shall, at an adjournment of the meeting held not later than two months thereafter, lay before such adjourned meeting a profit and loss account and balance sheet made up to the original date of the meeting, or such other more remote date not being more than 12 months before the original date of the meeting as the Registrar upon application lodged with him may set (article 135(2), Corporations Act 1972).

150. The Registrar may in any particular case order that the accounting and other records of a corporation be open to inspection by a registered corporation auditor acting for a director, but only upon an undertaking in writing given to the Registrar that information acquired by the auditor during his inspection shall not be disclosed by him except to that director (article 134(3), Corporations Act 1972). Failure to comply with this provision is an offence, and any person who is found guilty is liable on conviction to a fine of AUD 500 and to imprisonment for six months in respect of each such offence (article 241(2), Corporations Act 1972).

151. Further, pursuant to article 6 of the Corporations Act, for the purposes of ascertaining whether a corporation is compliant with any provisions of the Corporations Act, the Registrar or any person authorised by him may inspect any book, minute book, register or record required by or under the Act to be kept by the corporation; and the corporation or any officer of it shall produce these as requested, and not obstruct or hinder the Registrar's inspection (article 6(5), Corporations Act 1972). This provision applies equally to a corporation incorporated outside Nauru which is registered with the Registrar as continued in Nauru as if it had been incorporated under the Corporations Act (article 15a(1), Corporations Act 1972). Any person who is guilty of an offence against the provisions of article 6 is liable on conviction to a fine of AUD 500 and to imprisonment for six months in respect of each such offence (article 241(2), Corporations Act 1972).

152. The Corporations Act does not expressly require accounting records to include underlying documentation in Nauru. The Act also does not expressly require overseas companies to maintain accounting records. The Corporations Act does not impose a retention period on maintaining accounting records in Nauru.

Regulated Entities

153. Licensing requirements are imposed on certain industry sectors (bank and financial institutions, and trust businesses) as explained in *ToR A.1.1, Regulated Entities.* Licensing conditions impose additional obligations in

respect of accounting information. Whilst some obligations in respect of accounting information vary according to the license types, there are some general themes and obligations which are set out below.

154. Pursuant to the Banking Act 1975, all entries in any books of, and all accounts kept by, any bank or financial institutions licensed by the Registrar of Banks shall be recorded and kept in the English language using the system of numerals employed for the time being in keeping the accounts of Nauru (article 21(1), Banking Act 1975). A director or manager of a bank or financial institution licensed by the Registrar of Banks which fails to take all reasonable steps to secure compliance with this provision commits an offence and is subject, if an individual, to a penalty of AUD 500 and six months imprisonment, or for a body corporate AUD 5 000 (article 20(2), Banking Act 1975). In addition, failure to comply with this requirement may result in the revoking of the license of that bank or financial institution to carry on banking business in Nauru, unless it shows cause to the satisfaction of the Minister why the license should not be revoked (article 21, Banking Act 1975).

155. Every bank and financial institution shall have its accounts audited within six months of the end of its financial year or at such time or times as the Minister may order in any particular case. Such audits are by a registered corporation auditor or by a person approved by the Minister on the application of a corporation or foreign corporation licensed under the Banking Act 1975 for such person to be approved as its auditor, or by such method of internal audit as shall be acceptable by the Minister (article 15(1), Banking Act, 1975).

156. The audit is to be submitted to the Registrar of Banks together, where applicable, with a copy of the profit and loss account and balance sheet of the bank or financial institution for the financial year to which the report relates and a copy of such notes, if any, as the auditor has made on the accounts (article 15(2), Banking Act 1975).

157. The Minister may, if he has reason to believe that a bank or financial institution licensed under the Banking Act is carrying on its business in a manner which he regards as not satisfactory or is contravening or not complying with provisions of the Banking Act, appoint any fit and proper person or persons having a sufficient knowledge of accountancy to examine as often as may be necessary or expedient the books and affairs of that bank or financial institution and report to the Minister (article 16, Banking Act 1975). Such examiner(s) shall be given access to all accounts, returns and other information with regard to the bank or financial institution which are in its possession (article 16(1), Banking Act 1975).

158. Failure to comply with or contravening provisions surrounding such audits or examinations is an offence subject to a penalty of for an individual

AUD 500 and six months imprisonment, or for a body corporate AUD 5 000 (article 20(2), Banking Act 1972).

159. From the annual reporting requirements we can conclude that a bank or financial institution is required to keep records of account in line with the international standard; however, a retention period is not specified in the Banking Act. There are currently no banks in Nauru.

Partnerships

160. The partnership books of a firm are to be kept at the place of business of the partnership, or the principal place, if there is more than one, and every partner may, when he thinks fit, have access to and inspect and copy any of them (article 24(10), Partnership Act 1976).

161. Further, partners are bound to render true accounts and full information of all things affecting the partnership to any partner or his legal representatives (article 27, Partnership Act 1976). It is unclear what "true accounts and full information" entails and whether it will ensure that reliable accounting records and underlying documentation are available in respect of partnerships in all cases: and in addition, no retention period is specified. Thus, this falls short of an express requirement to keep records to the international standard.

Trusts

162. As detailed in section A.1.1. *Trusts*, the Nauru Trustee Corporation may be appointed as a trustee (acting as solely or jointly) under any will, settlement or other instrument creating a trust, or to perform any trust or duty authorised by the Act (article 6(1), Nauru Trustee Corporations Act 1972). The Nauru Trustee Corporation must appoint a registered corporation auditor (corporation auditors being appointed by the Minister pursuant to article 9 of the Corporations Act 1972) to be its auditor and to audit its accounts at least once in every year (article 15(1), Nauru Trustee Corporations Act 1972). However, it is not clear what these accounts must include – i.e. whether they include the financial results of each trust administered.

163. The auditor's report must be provided to the Cabinet. The Cabinet may on its own initiative, or upon the application of any person claiming an interest under any trust, appoint any person to examine any trust account, trust transaction, investment or trust security of the Corporation and to report to the Cabinet or the resident magistrate, as the case may be (article 15(1)(2), Nauru Trustee Corporations Act 1972).

164. The Nauru Trustee Corporation must comply with any written directions given to it by the Cabinet as to the manner of keeping its trust accounts

or securing its trust investments pursuant to any recommendation of such examiner, not being contrary to its duty as trustee (article 15(3), Nauru Trustee Corporations Act 1972).

165. The Nauru Trustee Corporations Act 1972 requires the Nauru Trustee Corporation to keep all trust moneys separate from its own moneys and to account for them separately (article 16, Nauru Trustee Corporations Act 1972).

166. Pursuant to the Custom and Adopted Laws Act of 1971, Nauru adopted England's common law, statutes of general application and the principles of equity as in force at 31 January 1968 (with the exception of statutes specifically rejected in that act). Under common law there is a general duty on trustees to maintain proper accounts and records which in the cases of non-charitable trusts is linked to the duty to inform beneficiaries. No specific case law exists in Nauru in this regard. The extent of common law obligations will be further reviewed in Phase 2 review of Nauru. Foreign trusts will be typically governed by foreign law, so it is unclear whether and which common law duties would apply with respect to these arrangements.

AML

167. Financial institutions and DNFBPs are also subject to the record keeping requirements in the AMLA (article 35). Obligated persons should establish and maintain records of all transactions and associated transaction correspondence (article 35(1)), and keep identification records (article 35(2)). All these data and information must be retained for a minimum period of 5 years (article 35(3)). In addition, timeliness of producing records to competent authorities is explicitly covered in article 35(4) and when a financial institution or DNFBP fails to comply with this requirement, the enforcement provisions in article 13 of the AMLA can be invoked.

Determination and factors underlying recommendations

Phase 1 determination	
The element is not in place.	
Factors underlying recommendations	**Recommendations**
Nauruan law does not ensure that reliable accounting records and underlying documentation are kept for partnerships carrying on business in Nauru, foreign companies with a sufficient nexus to Nauru or for domestic and foreign trusts with a Nauruan trustee.	Nauru should establish obligations for the maintenance of reliable accounting records, including underlying documentation, for partnerships carrying on business in Nauru, foreign companies with a sufficient nexus to Nauru and domestic and foreign trusts with a Nauruan trustee for a minimum of 5 years.
Companies are not required to retain underlying documentation in accordance to the international standard. Moreover, companies, other than domestic holding companies, are not required to maintain accounting records for a minimum 5 year period.	Nauru should establish obligations for the maintenance of underlying documentation for all companies. Nauru should ensure that its laws require that accounting records and underlying documentation are kept for all relevant entities and arrangements for a minimum of 5 years.

A.3. Banking information

Banking information should be available for all account-holders.

Record-keeping requirements (ToR A.3.1)

168. The record-keeping requirements for banks can be in found in Nauru's AML Law, namely the AMLA.

169. The AMLA requires that obligated institutions keep records of every transaction that is conducted through the financial institution as are reasonably necessary to enable the transaction to be readily reconstructed at any time by the FIU or a law enforcement agency (article 35(2)). The records must contain:

- the name, address and occupation or where appropriate business or principal activity of each person (i) conducting the transactions; and (ii) if applicable, on whose behalf the transaction is being conducted, as well as the documents used by the obligated entity to identify and verify the identity of each such person;

- the nature and date of the transaction;
- the type and amount of currency involved;
- the type and identifying number of any account with the financial institution involved in the transactions;
- if the transaction involves a negotiable instrument other than currency, the name of the drawer of the instrument, the name of the institution on which it was drawn, the name of the payee, if any, the amount and date of the instrument, the number, if any, of the instrument and details of any endorsements appearing on the instrument; and,
- the name and address of the financial institution and the officer, employee or agent of the financial institution who prepared the record.

170. An obligated entity shall keep these records for a minimum period of five years from the date (a) the evidence of a person's identity was obtained; (b) of any transaction or correspondence; or (c) the account is closed or business relationship ceases, whichever of (b) or (c) with (a) is the later (s. 35(3)).

171. Article 27 of the AMLA contains the CDD requirements. Article 27(1) establishes that obligated persons under the Act shall verify the identity of the customer on the basis of reliable and independent source documents, data or information or other evidence as is reasonably capable of verifying the identity of the customer, when entering in a continuing business relationship. In addition, article 21(4) requires obligated persons to verify the identity of the person or persons for whom, or for whose ultimate benefit, a transaction via a continuing business relationship is being conducted. While this provision seems to refer to the identification of the beneficial owners, the concept of beneficial owner is not further defined in the law or in any related guidelines.

172. Article 36(4) of the AMLA specifically requires financial institutions (including DNFBPs) to conduct ongoing due diligence, thus to ensure that documents, data or information collected under the CDD process are kept up-to-date and relevant.

173. Article 26 of the AMLA contains a prohibition to open, operate or authorise anonymous or numbered accounts. The only financial service provider (Western Union) currently operating in Nauru does not offer customers the opportunity to keep accounts.

174. Enforcement powers to ensure compliance with the CDD requirements are contained in article 32 of the AMLA; while article 35(6) contains similar powers to ensure compliance with the record-keeping requirements. The effectiveness of the enforcement measures will be assessed in the Phase 2 of Nauru.

Determination and factors underlying recommendations

Phase 1 determination
The element is in place.

B. Access to Information

Overview

175. A variety of information may be needed in a tax enquiry and jurisdictions should have the authority to obtain all such information. This includes information held by banks and other financial institutions as well as information concerning the ownership of companies or the identity of interest holders in other persons or entities, such as partnerships and trusts, as well as accounting information in respect of all such entities. This section of the report examines whether Nauru's legal and regulatory framework gives the authorities access powers that cover the right types of persons and information and whether rights and safeguards would be compatible with effective exchange of information.

176. Nauru's domestic laws do not allow for access to any information with regard to any entity pursuant to an EOI mechanism, therefore element B.1 is found to be not in place.

177. Because there are no access powers, and therefore no corresponding rights and safeguards, it was not possible to evaluate whether element B.2 is in place, as there is no basis on which to make this determination.

178. Nauru's authorities can access information pursuant to its Mutual Assistance in Criminal Matters Act 2004 (MACMA), but this information would be limited to criminal information and would not include information requested pursuant to an EOI arrangement for tax purposes.

B.1. Competent Authority's ability to obtain and provide information

Competent authorities should have the power to obtain and provide information that is the subject of a request under an exchange of information arrangement from any person within their territorial jurisdiction who is in possession or control of such information (irrespective of any legal obligation on such person to maintain the secrecy of the information).

Ownership and identity information (ToR B.1.1); Accounting records (ToR B.1.2); and Use of information gathering measures absent domestic tax interest (ToR B.1.3)

179. Competent authorities should have the power to obtain and provide information held by banks, other financial institutions, and any person acting in an agency or fiduciary capacity including nominees and trustees, as well as information regarding the ownership of companies, partnerships, trusts, foundations, and other relevant entities including, to the extent that it is held by the jurisdiction's authorities or is within the possession or control of persons within the jurisdiction's territorial jurisdiction, ownership information on all such persons in an ownership chain.[25] Competent authorities should also have the power to obtain and provide accounting records for all relevant entities and arrangements.[26]

180. Nauru's domestic laws do not give Nauru's authorities the power to access information for exchange purposes under bilateral or multilateral treaties. While Nauru's regulatory authorities do have powers to access information for domestic purposes in many instances, these powers cannot be used to obtain information pursuant to an EOI request.

181. The MACMA enables the authorities in Nauru to obtain and provide information to foreign authorities in relation to criminal investigations and proceedings. Although it does not expressly exclude tax matters, the definition of criminal matters in article 3 is such that it excludes offences against the laws of other countries which would not have constituted an offence had they occurred in Nauru (s. 3, MACMA). As Nauru does not impose taxes this would preclude the provision of assistance in the case of tax offences. Further, the Minister has broad authority to refuse or delay a request. The Minister may refuse a request in whole or in part on the ground that to grant the request would be likely to prejudice the sovereignty, security or other essential public interest of Nauru (s. 9(a), MACMA). The Minister may also, after consulting with the relevant authority of the foreign country, postpone the request in whole or in part, on the ground that granting the request

25. See OECD Model TIEA Article 5(4).
26. See JAHGA Report paragraphs 6 and 22.

immediately would be likely to prejudice the conduct of an investigation or proceeding in Nauru (s. 9(b), MACMA).

182. It is recommended that Nauru enact legislation that would give the government powers to access information pursuant to a request under an EOI mechanism in accordance with the international standards.

Compulsory powers (ToR B.1.4)

183. Nauru's authorities do not have compulsory powers to obtain information in response to a request for information under a TIEA or a DTC. Nauru should ensure that when it provides powers to its government authorities to access information pursuant to a request under an EOI mechanism, it establishes effective enforcement provisions to compel the production of information.

Secrecy provisions (ToR B.1.5)

184. Jurisdictions should not decline on the basis of its secrecy provisions (*e.g.* bank secrecy, corporate secrecy) to respond to a request for information made pursuant to an exchange of information mechanism. However, Nauru's laws contain a number of secrecy provisions to protect confidential information, which are currently not overridden for exchange of information purposes.

185. The Banking Act 1975, which provides for the licensing and regulation of commercial and trading banks and other financial institutions and for matters related to the carrying on of banking business in Nauru, contains a provision prohibiting disclosure of information by the bank, including pertaining to any banking transaction in Nauru, the transfer of moneys and property into or out of Nauru in the course of any banking transaction, the account of any person with the bank in Nauru or any item of such account or the fact of any person having, or having had, any said account (s. 7(1), Banking Act 1975).

186. Nauru's Minister may make regulations requiring banks and financial institutions to supply to the Registrar with information protected by secrecy, with the caveat that neither the Minister nor the Registrar shall reveal such information to any person other than to a public officer or an examiner appointed for the purpose of enabling him to carry out his duties (s. 6, Banking Act 1975). It is not known if any regulations in this connection have been issued.

187. Failure to comply with these confidentiality provisions is an offense, as does a director manager of a bank or financial institution which fails to take all reasonable steps to secure compliance by the bank or financial

institution with the provisions. The penalty for an individual is AUD 500 and six months imprisonment, or for a body corporate is AUD 5 000.

188. The Republic of Nauru Evidence (Confidential Information) Act 1976 prohibits the disclosure of information in relation to holding companies, in proceedings in any Court in Nauru, where one of the parties is a government of a foreign state or a department or agency of such a government. In the same circumstances, it also prohibits the disclosure, of information received by the Registrar of Companies, the Registrar of Banks or the Nauru Trustee Corporation or the disclosure of information, such as bank information, that a person is prohibited by any written law from disclosing (article 4(1)(b), Evidence (Confidential Information) Act 1976.

189. Article 33 of the Nauru Trustee Corporations Act 1972 prohibits Nauru Trustee Corporation's officers, servants or auditors from making any disclosure of the identity of the creator or beneficiary of any trust otherwise than is necessary for the purpose of administering the trust or investing or recovering the assets thereof, unless by the leave of the resident magistrate (article 33, Nauru Trustee Corporations Act 1972).

190. A registered director shall not disclose or use information he has obtained by reason of his office to any person or for any purpose other than in accordance with his duty as a director of the corporation except so far as he may be compelled by law so to do. Exceptions to this apply when required to do so to an appropriate public officer in Nauru or otherwise make use within Nauru only of information coming to his knowledge which he honestly believes suggests that a fraud is being or is likely to be practiced by the corporation or by any of its members or directors or upon the corporation or any of its members (article 103(7), Corporations Act). This same provision and the exception to it are applicable to all officers, servants, employees, agents and members of a registered director (article 103(8), Corporations Act). Any person who contravenes this provision is guilty of an offence against this Act (article 103(9), Corporations Act).

191. When implementing its access powers, Nauru should ensure that they are not unduly restricted by secrecy provisions provided in its domestic laws.

Conclusion

192. To date, authorities in Nauru do not have any powers to access information for exchange purposes pursuant to an EOI instrument. Nauru's authorities can access information pursuant to its Mutual Assistance in Criminal Matters Act 2004 (MACMA), but this information would be limited to criminal information and would not include information requested pursuant to an EOI arrangement for tax purposes. It is recommended that Nauru enact legislation that would give the government powers to access

information pursuant to a request under an EOI mechanism in accordance with the international standards. Nauru should ensure that it has in place effective enforcement provisions to compel the production of information and that its access powers are not unduly restricted by secrecy provisions provided in its domestic laws.

Determination and factors underlying recommendations

Phase 1 determination	
The element is not in place.	
Factors underlying recommendations	**Recommendations**
Nauru's authorities do not have the power to obtain and provide information that is the subject of a request under an EOI mechanism.	Nauru should enact legislation that would give the government powers to access information pursuant to a request under an EOI mechanism in accordance with the international standards. Nauru should ensure that its access powers are not unduly restricted by secrecy provisions and that effective enforcement provisions are in place to compel the production of information.

B.2. Notification requirements and rights and safeguards

The rights and safeguards (*e.g.* notification, appeal rights) that apply to persons in the requested jurisdiction should be compatible with effective exchange of information.

Not unduly prevent or delay exchange of information *(ToR B.2.1)*

193. Rights and safeguards should not unduly prevent or delay effective exchange of information.[27] For instance, notification rules should permit exceptions from prior notification (*e.g.* in cases in which the information request is of a very urgent nature or the notification is likely to undermine the chance of success of the investigation conducted by the requesting jurisdiction).

194. There are no powers to access information to reply to a request made pursuant to a tax treaty in Nauru's domestic laws (see section B.1. above). Consequently, there are also no notification rules or rights and safeguards. Therefore, it is not possible to assess whether this element is in place, as there

27. See OECD Model TIEA Article 1.

is no basis upon which to make this determination. When Nauru chooses to implement access powers in its domestic laws, any rights and safeguards included should be evaluated at that time.

Determination and factors underlying recommendations

Determination
The assessment team is not in a position to evaluate whether this element is in place, as there is no basis upon which to make this determination.

C. Exchanging Information

Overview

195. Jurisdictions generally cannot exchange information for tax purposes unless they have a legal basis or mechanism for doing so. This section of the report examines whether Nauru has a network of information exchange that would allow it to achieve effective exchange of information in practice.

196. Nauru committed to the international standards for exchange of information in 2003. Nauru's domestic laws do not provide for access to information pursuant to an exchange of information request, nor has Nauru entered into EOI bilateral or multilateral instruments to date. It is unclear what the procedures are to bring an EOI instrument into force. However, Nauru has advised that the issue would be considered by the Cabinet when it becomes relevant. In 2008, Nauru was approached by its main trading partner to negotiate a TIEA. To date, this agreement has not been concluded.

197. Nauru's Criminal Code prevents persons employed in Nauru's public service from revealing any information or material which comes to their knowledge by virtue of his office and which it is his duty to keep secret, except to a person to whom he is bound to publish or communicate.

198. The present report does not address element C.5, as this involves issues of practice that will be dealt with in the Phase 2 review (see section C.5 below).

C.1. Exchange-of-information mechanisms

Exchange of information mechanisms should allow for effective exchange of information.

Foreseeably relevant standard (ToR C.1.1)

199. The international standard for exchange of information envisages information exchange upon request to the widest possible extent. Nevertheless it does not allow "fishing expeditions," *i.e.* speculative requests for information that have no apparent nexus to an open inquiry or investigation. The

balance between these two competing considerations is captured in the standard of "foreseeable relevance" which is included in Article 26(1) of the OECD *Model Taxation Convention* set out below:

> The competent authorities of the contracting states shall exchange such information as is foreseeably relevant to the carrying out the provisions of this Convention or to the administration or enforcement of the domestic laws concerning taxes of every kind and description imposed on behalf of the contracting states or their political subdivisions or local authorities in so far as the taxation thereunder is not contrary to the Convention. The exchange of information is not restricted by Articles 1 and 2.

200. Nauru has signed no bilateral or multilateral instruments that provide for exchange of information to date.

In respect of all persons (ToR C.1.2)

201. For exchange of information to be effective it is necessary that a jurisdiction's obligation to provide information is not restricted by the residence or nationality of the person to whom the information relates or by the residence or nationality of the person in possession or control of the information requested. For this reason, the international standard for exchange of information envisages that exchange of information mechanisms will provide for exchange of information in respect of all persons.

202. Nauru has not entered into international treaties providing for exchange of information for tax purposes yet.

Obligation to exchange all types of information (ToR C.1.3)

203. Jurisdictions cannot engage in effective exchange of information if they cannot exchange information held by financial institutions, nominees or persons acting in an agency or a fiduciary capacity. The OECD *Model Taxation Convention*, which is an authoritative source of the standards, stipulates that bank secrecy cannot form the basis for declining a request to provide information and that a request for information cannot be declined solely because the information is held by nominees or persons acting in an agency or fiduciary capacity or because the information relates to an ownership interest.

204. Nauru has signed no bilateral or multilateral instruments that provide for exchange of information to date.

Absence of domestic tax interest (ToR C.1.4)

205. The concept of "domestic tax interest" describes a situation where a contracting party can only provide information to another contracting party if it has an interest in the requested information for its own tax purposes. An inability to provide information based on a domestic tax interest requirement is not consistent with the international standard. Contracting parties must use their information gathering measures even though invoked solely to obtain and provide information to the other contracting party.

206. Currently, Nauru has no powers to access information in order to reply to a request made under EOI bilateral or multilateral instrument (see section B.1 of this report).

Absence of dual criminality principles (ToR C.1.5)

207. The principle of dual criminality provides that assistance can only be provided if the conduct being investigated (and giving rise to an information request) would constitute a crime under the laws of the requested country if it had occurred in the requested country. In order to be effective, exchange of information should not be constrained by the application of the dual criminality principle.

208. The MACMA enables the authorities in Nauru to obtain and provide information to foreign authorities in relation to criminal investigations and proceedings. Although it does not expressly exclude tax matters, the definition of criminal matters in article 3 is such that it excludes offences against the laws of other countries which would not have constituted an offence had they occurred in Nauru (article 3, MACMA). As Nauru does not impose taxes this would appear to exclude the provision of assistance in the case of tax offences.

Exchange of information in both civil and criminal tax matters (ToR C.1.6)

209. Information exchange may be requested both for tax administration purposes and for tax prosecution purposes. The international standard is not limited to information exchange in criminal tax matters but extends to information requested for tax administration purposes (also referred to as "civil tax matters").

210. Nauru has signed no bilateral or multilateral instruments that provide for exchange of information in civil or criminal tax matters to date.

Provide information in specific form requested (ToR C.1.7)

211. In some cases, a Contracting State may need to receive information in a particular form to satisfy its evidentiary or other legal requirements. Such forms may include depositions of witnesses and authenticated copies of original records. Contracting States should endeavour as far as possible to accommodate such requests. The requested State may decline to provide the information in the specific form requested if, for instance, the requested form is not known or permitted under its law or administrative practice. A refusal to provide the information in the form requested does not affect the obligation to provide the information.

212. Nauru has signed no bilateral or multilateral instruments that provide for exchange of information to date.

In force (ToR C.1.8)

213. Exchange of information cannot take place unless a jurisdiction has exchange of information arrangements in force. Where exchange of information agreements have been signed, the international standard requires that jurisdictions take all steps necessary to bring them into force expeditiously.

214. Nauru has no exchange of information instruments signed or in force. It is therefore unclear what the procedures are to bring an instrument into force. However, Nauru has advised that the issue would be considered by the Cabinet when it becomes relevant. Negotiations to establish a TIEA commenced with one jurisdiction; however, signing has been postponed indefinitely.

Be given effect through domestic law (ToR C.1.9)

215. For exchange of information to be effective, the contracting parties must enact any legislation necessary to comply with the terms of the agreement. Nauru has not entered into EOI bilateral or multilateral instruments to date.

216. The process for ratification of an international treaty in Nauru is for a Bill signed by the Minister to be submitted to Parliament, where it will pass through three readings. The Act then certified by the Speaker and Clerk, will be provided by copy to the Justice Department, Supreme Court, the Department responsible for administrating the Act, and the Pacific Institute of Legal Information at the University of the South Pacific in Vanuatu. Nauru has not entered into EOI bilateral or multilateral instruments to date.

217. The shortcomings identified in Part B of this report mean that Nauru would not be able to fully comply with the terms of an EOI arrangement to the international standard. It is recommended that Nauru implement

legislation to provide it with full access powers which may be exercised in order to respond to an EOI request with relevant exchange of information partners.

Determination and factors underlying recommendations

Phase 1 determination	
The element is not in place.	
Factors underlying recommendations	**Recommendations**
To date, Nauru has not entered into any instruments providing for exchange of information to the standard.	Nauru should develop its exchange of information network with all relevant partners.

C.2. Exchange-of-information mechanisms with all relevant partners

The jurisdictions' network of information exchange mechanisms should cover all relevant partners.

218. Ultimately, the international standard requires that jurisdictions exchange information with all relevant partners, meaning those partners who are interested in entering into an information exchange arrangement. Agreements cannot be concluded only with counterparties without economic significance. If it appears that a jurisdiction is refusing to enter into agreements or negotiations with partners, in particular ones that have a reasonable expectation of requiring information from that jurisdiction in order to properly administer and enforce its tax laws it may indicate a lack of commitment to implement the standards.

219. Nauru has not yet developed a network of information exchange agreements that would allow it to achieve effective exchange of information in practice. TIEA negotiations commenced in 2008 with one jurisdiction, Nauru's main trading partner. In the course of this review, comments were sought from the jurisdictions participating in the Global Forum and Nauru's major trading partner confirmed that over the last several years it has been attempting to engage Nauru in finalising the TIEA with no success so far.

Determination and factors underlying recommendations

Phase 1 determination	
The element is not in place.	
Factors underlying recommendations	**Recommendations**
In 2008, Nauru was approached by its main trading partner to negotiate a TIEA. To date, this agreement has not been concluded.	Nauru should develop its exchange of information network with all relevant partners.

C.3. Confidentiality

The jurisdictions' mechanisms for exchange of information should have adequate provisions to ensure the confidentiality of information received.

Information received: disclosure, use, and safeguards (ToR C.3.1) and All other information exchanged (ToR C.3.2)

220. Governments would not engage in information exchange without the assurance that the information provided would only be used for the purposes permitted under the exchange mechanism and that its confidentiality would be preserved. Information exchange instruments must therefore contain confidentiality provisions that spell out specifically to whom the information can be disclosed and the purposes for which the information can be used. In addition to the protections afforded by the confidentiality provisions of information exchange instruments, jurisdictions with tax systems generally impose strict confidentiality requirements on information collected for tax purposes.

221. Nauru's domestic laws prevent any person employed in the public service from revealing any information or material which comes to his knowledge by virtue of his office and which it is his duty to keep secret. The penalty for violating this confidentiality provision is conviction of a misdemeanour, and liable to imprisonment for two years (Part III of the Criminal Code, Offences Against the Administration of Law and Justice and Against Public Authority, under Chapter XII, Disclosing Official Secrets, article 86).

222. There is an exception to the confidentiality provision outlined above, providing that a person may reveal information or material to the person to whom he or she is bound to publish or communicate such information or material (article 86 Criminal Code).

223. The MACMA, which provides for mutual assistance in criminal matters, prohibits the disclosure of requests for international assistance by a

person who, because of his or her office or employment, has knowledge of the contents of a request for international assistance made by a foreign country to Nauru under that Act, or the fact that a request has been made, or the fact that a request has been granted or refused. The person must not intentionally disclose those contents or that fact unless it is necessary to do so in the performance of his or her duties or the Minister has given his or her approval to the disclosure of those contents or that fact (article 61, MACMA).

224. A person who contravenes this provision is guilty of an offence punishable by a fine of up to AUD 10 000 or a term of imprisonment of up to 2 years, or both if a natural person, or a fine of up to AUD 50 000 if the person is a body corporate (s. 62(2), MACMA).

Determination and factors underlying recommendations

Phase 1 determination	
The element is not in place.	
Factors underlying recommendations	**Recommendations**
To date, Nauru has not entered into any instruments providing for exchange of information to the standard.	Nauru should develop its exchange of information network with all relevant partners.

C.4. Rights and safeguards of taxpayers and third parties

The exchange of information mechanisms should respect the rights and safeguards of taxpayers and third parties.

Exceptions to requirement to provide information (ToR C.4.1)

225. The international standard allows requested parties not to supply information in response to a request in certain identified situations where an issue of trade, business or other listed secret may arise.

226. Among other reasons, an information request can be declined where the requested information would disclose confidential communications protected by legal professional privilege, which is a feature of the legal systems of many jurisdictions. However, communications between a client and a lawyer or other admitted legal representative are, generally, only privileged to the extent that the lawyer or other legal representative acts in his or her capacity as a lawyer or other legal representative. Where legal professional privilege is more broadly defined it does not provide valid grounds on which to decline a request for exchange of information. To the extent, therefore, that a lawyer acts as a nominee shareholder, a trustee, a settlor, a company

director or under a power of attorney to represent a company in its business affairs, exchange of information resulting from and relating to any such activity cannot be declined because of legal professional privilege.

227. Nauru has not concluded any EOI agreements to date. Domestic provisions on the professional privilege (e.g. privilege applicable to trustees) are not in accordance with the international standard (see section B.1.5 of this report). There are no express provisions in Nauru law concerning rights and safeguards of taxpayers and third parties.

Determination and factors underlying recommendations

Phase 1 determination	
The element is not in place.	
Factors underlying recommendations	**Recommendations**
To date, Nauru has not entered into any instruments providing for exchange of information to the standard.	Nauru should develop its exchange of information network with all relevant partners.

C.5. Timeliness of responses to requests for information

The jurisdiction should provide information under its network of agreements in a timely manner.

Responses within 90 days (ToR C.5.1)

228. In order for exchange of information to be effective it needs to be provided in a timeframe which allows tax authorities to apply the information to the relevant cases. If a response is provided but only after a significant lapse of time the information may no longer be of use to the requesting authorities. This is particularly important in the context of international co-operation as cases in this area must be of sufficient importance to warrant making a request.

229. Nauru's domestic laws do not provide for access to information pursuant to an exchange of information request, nor has Nauru entered into EOI bilateral or multilateral instruments to date.

230. As regards the timeliness of responses to requests for information the assessment team is not in a position to evaluate whether this element is in place, as it involves issues of practice that are dealt with in the Phase 2 review.

Organisational process and resources (ToR C.5.2)

231. The Minister of Finance is the authority responsible for tax matters in Nauru. The Department of Foreign Affairs is responsible for entering into international agreements.

232. A review of Nauru's organisational process and resources will be conducted in the context of its Phase 2 review.

Absence of restrictive conditions on exchange of information (ToR C.5.3)

233. Exchange of information should not be subject to unreasonable, disproportionate or unduly restrictive conditions.

234. Nauru's domestic laws do not provide for access to information pursuant to an exchange of information request, nor has Nauru entered into EOI bilateral or multilateral instruments to date.

Determination and factors underlying recommendations

Phase 1 determination
The assessment team is not in a position to evaluate whether this element is in place, as it involves issues of practice that are dealt with in the Phase 2 review.

Summary of Determinations and Factors Underlying Recommendations

Determination	Factors underlying recommendations	Recommendations
Jurisdictions should ensure that ownership and identity information for all relevant entities and arrangements is available to their competent authorities *(ToR A.1)*		
Phase 1 determination: The element is not in place.	Identity information on the owners of bearer shares and share warrants to bearer may not be available in relation to corporations.	Nauru should take necessary measures to ensure that robust mechanisms are in place to identify the owners of bearer shares and share warrants to bearer in relation to corporations.
	Identity and ownership information may not consistently be available in respect of (i) domestic trusts and (ii) foreign trusts with a Nauruan trustee.	Nauru should ensure the availability of ownership and identity information in respect of settlors and beneficiaries of domestic and foreign trusts in all cases.
Jurisdictions should ensure that reliable accounting records are kept for all relevant entities and arrangements *(ToR A.2)*		
Phase 1 determination: The element is not in place.	Nauruan law does not ensure that reliable accounting records and underlying documentation are kept for partnerships carrying on business in Nauru, foreign companies with a sufficient nexus to Nauru or for domestic and foreign trusts with a Nauruan trustee.	Nauru should establish obligations for the maintenance of reliable accounting records, including underlying documentation, for partnerships carrying on business in Nauru, foreign companies with a sufficient nexus to Nauru and domestic and foreign trusts with a Nauruan trustee for a minimum of 5 years.

Determination	Factors underlying recommendations	Recommendations
	Companies are not required to retain underlying documentation in accordance to the international standard. Moreover, companies other than domestic holding companies, are not required to maintain accounting records for a minimum 5 year period.	Nauru should establish obligations for the maintenance of underlying documentation for all companies. Nauru should ensure that its laws require that accounting records and underlying documentation are kept for all relevant entities and arrangements for a minimum of 5 years.
Banking information should be available for all account-holders *(ToR A.3)*		
This element is in place.		
Competent authorities should have the power to obtain and provide information that is the subject of a request under an exchange of information arrangement from any person within their territorial jurisdiction who is in possession or control of such information (irrespective of any legal obligation on such person to maintain the secrecy of the information) (B.1.)		
The element is not in place.	Nauru's authorities do not have the power to obtain and provide information that is the subject of a request under an EOI mechanism.	Nauru should enact legislation that would give the government powers to access information pursuant to a request under an EOI mechanism in accordance with the international standards. Nauru should ensure that its access powers are not unduly restricted by secrecy provisions and that effective enforcement provisions are in place to compel the production of information.
The rights and safeguards (*e.g.* notification, appeal rights) that apply to persons in the requested jurisdiction should be compatible with effective exchange of information (B.2.)		
The assessment team is not in a position to evaluate whether this element is in place, as there is no basis upon which to make this determination.		

Determination	Factors underlying recommendations	Recommendations
Exchange of information mechanisms should allow for effective exchange of information *(ToR C.1)*		
Phase 1 determination: The element is not in place.	To date, Nauru has not entered into any instruments providing for exchange of information.	Nauru should develop its exchange of information network with all relevant partners.
The jurisdictions' network of information exchange mechanisms should cover all relevant partners *(ToR C.2)*		
Phase 1 determination: The element is not in place.	In 2008, Nauru was approached by its main trading partner to negotiate a TIEA. To date, this agreement has not been concluded.	Nauru should develop its exchange of information network with all relevant partners.
The jurisdictions' mechanisms for exchange of information should have adequate provisions to ensure the confidentiality of information received *(ToR C.3)*		
Phase 1 determination: The element is not in place.	To date, Nauru has not entered into any instruments providing for exchange of information.	Nauru should develop its exchange of information network with all relevant partners.
The exchange of information mechanisms should respect the rights and safeguards of taxpayers and third parties *(ToR C.4)*		
Phase 1 determination: The element is not in place.	To date, Nauru has not entered into any instruments providing for exchange of information.	Nauru should develop its exchange of information network with all relevant partners.
The jurisdiction should provide information under its network of agreements in a timely manner *(ToR C.5)*		
The assessment team is not in a position to evaluate whether this element is in place, as it involves issues of practice that are dealt with in the Phase 2 review.		

Annex 1: Jurisdiction's Response to the Review Report[28]

This annex is left blank because Nauru has chosen not to provide any material to include in it.

28. This Annex presents the jurisdiction's response to the review report and shall not be deemed to represent the Global Forum's views.

Annex 2: List of All Exchange-of-Information Mechanisms

Nauru does not currently have any exchange of information mechanisms.

Annex 3: List of all Laws, Regulations and Other Relevant Material

Civil and Commercial Laws

Business Names Act 1976 (As in force from 15 April 2011)

Business Licences Act 2011 (Act No. 14 of 2011)

Business Licences Regulations 2011 (SL No. 6 of 2011)

Bingo Licensing Act 2008 (Act No. 6 of 2008)

Corporations Act 1972 (As in force from 15 April 2011)

Custom and Adopted Laws Act 1971

Foreign Trusts, Estates and Wills Act 1972 (As in force from 15 April 2011)

Interpretations Act 2011

Nauru Trustee Corporation Act 1972

Partnership Act 1976

Taxation Laws

Customs Act 1921 (As in force from 1 November 2010)

Customs Proclamation No. 2 (Customs Ordinance 1922-1967)

Customs Tariffs (Exemptions) Regulations 2006

Telecommunications Service Tax Act 2009 (No.9 of 2009)

Banking Laws

Banking Act 1975

Bank of Nauru Act 1976

Anti-Money Laundering Laws

Counter Terrorism and Transnational Organised Crime Act 2004 (As in force from 18 November 2010)

Proceeds of Crime Act 2004

Other Laws

Criminal Code (As in force from 11 August 2006)

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Global Forum on Transparency and Exchange of Information for Tax Purposes

PEER REVIEWS, PHASE 1: NAURU

The Global Forum on Transparency and Exchange of Information for Tax Purposes is the multilateral framework within which work in the area of tax transparency and exchange of information is carried out by 120 jurisdictions, which participate in the Global Forum on an equal footing.

The Global Forum is charged with in-depth monitoring and peer review of the implementation of the international standards of transparency and exchange of information for tax purposes. These standards are primarily reflected in the 2002 *OECD Model Agreement on Exchange of Information on Tax Matters* and its commentary, and in Article 26 of the *OECD Model Tax Convention on Income and on Capital* and its commentary as updated in 2004. The standards have also been incorporated into the UN *Model Tax Convention*.

The standards provide for international exchange on request of foreseeably relevant information for the administration or enforcement of the domestic tax laws of a requesting party. Fishing expeditions are not authorised but all foreseeably relevant information must be provided, including bank information and information held by fiduciaries, regardless of the existence of a domestic tax interest or the application of a dual criminality standard.

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All review reports are published once approved by the Global Forum and they thus represent agreed Global Forum reports.

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